

“My interest in this problem is very simple. You can find my agenda chiseled into the front of the United States Supreme Court where it says Equal Justice Under Law. That’s it.”¹

**Professor David Harris,
University of Toledo School of Law**

CHAPTER I

Governor’s Task Force on Racial Profiling Outreach to the Public

A. DEFINING RACIAL PROFILING

The issue of racial profiling is a national issue that has been described as both complex and multifaceted. Dedicated law enforcement officers all over America have worked extremely hard to make our communities safer. The overwhelming majority of officers are honest and hard working, but there is a perception held by some citizens that some officers are unfairly and illegally exercising their discretion and authority by impermissibly relying on the race of a citizen as a basis for police action.² This type of law enforcement conduct has been characterized as racial profiling and such activity has caused a number of citizens to complain about this form of discriminatory treatment. There is no presumption that minorities are more likely to be traffic offenders than others in America. “[E]veryone who drives a car is subject to being pulled over by a law enforcement officer almost every time they get behind the wheel.”³

In this report, the Governor’s Task Force on Racial Profiling focuses on racial profiling in traffic stops, as this was the charge from Governor Tommy G. Thompson in Executive Order 387.⁴ While the Task Force has learned that traffic stops are only one part of law enforcement officer/citizen interaction, this is the area in which the general

¹ Exhibit 12. Professor David Harris, University of Toledo School of Law, addressing the Task Force at the March 2000 Forum.

² Exhibit 9. Professors Deborah Ramirez and Jack McDevitt and Doctoral Candidate Amy Farrell, “A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned,” November 2000, a report to and funded by the United States Department of Justice.

³ Attorney Steven H. Rosenbaum, Chief of the Special Litigation Section, Civil Rights Division, United States Department of Justice addressing the Task Force at its May 2000 meeting; Exhibit 14.

⁴ Executive Order 387, Appendix 1.

population is most likely to come in contact with a law enforcement officer. The Task Force did not offer any formal definition of racial profiling in its invitations and announcements for the hearings and public meetings. National experts experienced with addressing these issues have defined racial profiling along several dimensions based on the nature of the law enforcement activity that is the subject of controversy.⁵ As part of its process, the Task Force received definitions that have been used by various experts many of whom addressed the Task Force at its meetings. Among those acceptable definitions for racial profiling is the one offered in a report to and funded by the United States Department of Justice. Racial profiling is defined as:

Any police-initiated action that relies upon race, ethnicity, or national origin of an individual rather than the behavior of that individual or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity. There is almost uniform consensus about two corollary principles that follow from adopting this definition of racial profiling:

- a. Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and whom to search.
- b. Police may use race or ethnicity to determine whether a person matches a specific description of a particular suspect.⁶

B. HISTORICAL OVERVIEW

1. National Perspective

Communities have increasingly welcomed more interactions with police in reducing crime, with the expectation that this can be accomplished in a fair, unbiased and respectful manner. However, over the past several years or so, a number of communities have focused national attention on the issue of racial discrimination in law enforcement stops of motorists. In 1994 the Congress of the United States authorized the Attorney General of the United States to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of violating federal constitutional or

⁵ Prof. David Harris, March 24, 2000; Prof. David Cole, February 22, 2000; Attorney Steven H. Rosenbaum, May 23, 2000; San Jose, California, Chief of Police, William Lansdowne, each addressing the Task Force at a public hearing or meeting on the noted date.

⁶ Exhibit 9.

statutory rights. As of May 23, 2000, there are no pattern or practice investigations of police conduct in Wisconsin pending before the United States Department of Justice.⁷

In addition, the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964 together prohibit law enforcement agencies receiving federal funds from engaging in discrimination on the basis of race, color, sex, national origin or religion. President William J. Clinton issued an Executive Memorandum requesting federal law enforcement officials to collect data on the race and gender of people they stop to question or arrest. With widespread and bi-partisan support, federal legislation that would provide for the collection of data from traffic stops by federal officers, including racial information, was presented to both Houses in Congress, and is still pending.⁸ The Attorney General has convened and encouraged numerous state and local law enforcement officials across the country to voluntarily gather race and ethnic statistics on people who are stopped and searched.⁹

At least 300 law enforcement agencies across the nation have voluntarily decided to collect racial data on traffic stops, including 34 city agencies in California. Some of these jurisdictions have voluntarily collected and analyzed data on traffic stops and shared the results with their communities and the nation. Some of these police jurisdictions that have voluntarily collected and analyzed traffic stop data are being commended by national leaders and held out as models of “best practices” for other areas with an interest in establishing similar management practices in their area.¹⁰ About eight states have enacted legislation requiring the collection of race data. A few cities and states have been required to collect data as part of a federal consent decree or other settlement of a pending or anticipated federal lawsuit based on citizen complaints of racial profiling. The nature of the cases involved allegations of a pattern or practice of

⁷ Exhibit 14, Transcript of May 23, 2000 meeting, p. 14.

⁸ The Traffic Stops Statistics Study Act of 2000, H.R. 1443, S. 821.

⁹ February 17, 2000 Task Force Chair, Judge Maxine White, was among invited participants in the Attorney General’s Conference that convened national experts on a variety of subjects in Washington, D.C. on the issue racial profiling in traffic stops.

¹⁰ The San Jose Police Department, which addressed the Task Force at the March 24, 2000, Public Forum, is recognized by the Attorney General as a “best practices” example in developing responses to community perceptions of racial profiling. (See, Professor Ramirez and others in the Report for USDOJ dated June 2000).

law enforcement stops based on racial profiles in violation of the federal equal protection laws.¹¹

This civil rights issue has centered on the allegations by persons of color that some federal, state and local police officials consider a person's race in deciding whether to take police action and in determining how to treat individuals once a contact occurs. Most of the national experts agree that the use of a person's perceived race in determining whether to stop, question, arrest or detain that person is a form of racial discrimination prohibited by the Equal Protection Clause of the United States Constitution.¹² The opinion among academic and law enforcement experts is that race should only be used to determine whether a person matches a specific description of a particular suspect.

2. Governor's Task Force Structure and History

Governor Tommy G. Thompson has recognized that the perception of racial profiling is an important issue in Wisconsin. After receiving input from various leaders around the state about the content and fiscal impact of the proposed traffic stop data collection legislation, Governor Thompson vetoed that portion of the 1999-2001 Biennium Budget Bill, 99 Wisconsin Act 9, to which it had been added. While vetoing this proposed legislation, the Governor created the Task Force on Racial Profiling, stating that the general concept of using race to decide whom to stop, the mere perception of the practice, is an issue that must be closely studied.¹³ When Governor Thompson vetoed the legislation his concerns were that this provision: (1) would have created an unfunded burden on local law enforcement and the Wisconsin Department of Justice; and (2) may have created issues of officer safety because this provision could significantly increase the exposure of law enforcement on the side of the road while the officers are collecting the required information.¹⁴

¹¹ 42 USC §14141.

¹² United States Constitution., Amendment XIV.

¹³ Veto message, 99 Wis. Act 9.

¹⁴ Id. See also Fiscal Estimate Forms dated February 9th and 24th, 2000, and dated March 13, 2000, of the Wisconsin Department of Justice addressing the fiscal ramifications of the bill estimating the costs to local law enforcement as "the equivalent of 311 FTE Law Enforcement Officers per year based on an average yearly work schedule" ... and costs to the state of 2 FTE program planning analysts and 1,500 hours of consultant programming develop costs.

Profiling legislation was introduced as 1999 Senate Bill 354 (SB 354) by Senators Moore, George and Plache, and 1999 Assembly Bill 716 (AB 716) introduced by Representatives Young, Turner, Colon, Riley, Morris-Tatum, Coggs, Williams, Bock, Richards, Wasserman, Black, Miller, Pocan, Berceau, Schooff, Boyle, Ryba and Klusman.¹⁵ Both SB 354 and AB 716 would have required statewide law enforcement to collect specified data on drivers and passengers during all motor vehicle stops beginning in January of 2001 and the Wisconsin Department of Justice to be responsible for the receipt analysis and annual reporting of the collected data. The issue of the Motor Vehicle Stops Bill requiring the collection of race and ethnicity during traffic stops was presented to the Senate and Assembly in February. Senate Bill 354, requiring the collection of data on the race or ethnicity of persons stopped for traffic violations was heard at the Senate Committee on Judiciary and Consumer Affairs in March of 2000. The bill passed the Senate Committee with a vote of 5 to 1 but failed to pass the Assembly Committee on Criminal Justice pursuant to Senate Joint Resolution 1 in April.¹⁶ Assembly Bill 716 was heard at the Assembly Committee on Criminal Justice in February of 2000, but no vote was taken to move the bill out of Committee.

C. TASK FORCE MEMBERS

The Governor appointed a diverse membership to the Task Force reflecting the perspectives of both those familiar with legal and policy considerations and those who have daily contact with diverse populations outside of the criminal justice system in community and work place settings. Members included representation from varied jurisdictions of law enforcement agencies, the judiciary, defense attorneys, the district

¹⁵ On February 1, 2000, Senate Bill 354 was referred to the Committee on Judiciary and Consumer Affairs, and a public hearing was held on March 7, 2000, it was moved by Senator George and seconded by Senator Risser that the SB 354 be recommended for passage, and the results were five for and none against with Senators Clausing, Huelsman and Darling along with George and Risser passing SB 354. On February 3, 2000, Assembly Bill 716 was referred to the Committee on Criminal Justice and a public hearing was held on February 24, 2000, with twelve representatives present, including Goetsch, Walker, Stone Ownes, Gundrum, Gunderson, Colon, Berceau, Huber, Richards, Wood and Young; Representatives F. Lasee and Jeskewitz were absent; on March 16, 2000, an Executive session was held with all fourteen Committee Representatives present. On March 16, 2000, no action was taken. On March 30, 2000, AB 716 failed to pass pursuant to Senate Joint Resolution 1. On March 16, 2000, Senate Bill 354 was referred to the Committee on Criminal Justice and a public hearing was held on March 23, 2000, with all fourteen Representatives present. On March 30, 2000, Senate Bill 354 failed to concur in pursuant to Senate Joint Resolution 1. See "Assembly Record of Committee Proceedings and for Senate Record of Committee Proceedings."

¹⁶ Id.

attorneys' office, legal academia, private industry, and the Wisconsin State Legislature. In addition, the Task Force members appointed the administrator for a municipal court system as an Ex-Officio Member. Day-to-day operational management and communications of the Task Force were in the hands of the Chair, Judge Maxine A. White, a Wisconsin state trial court judge in Milwaukee County. The Task Force members are: Attorney Jennifer Bias, Director of Community Justice Initiatives for the Office of the Wisconsin State Public Defender; Milwaukee County Sheriff Lev Baldwin; William Clay, Sr. Vice President/Chief Operations Officer, Opportunities Industrialization Center of Greater Milwaukee (OIC-GM); State Representative Pedro Colon, 8th Assembly District; David Espinoza, President – Chief Executive of LaCausa, Inc.; State Representative Robert Goetsch, 39th Assembly District; City of Milwaukee Police Chief Arthur Jones; State Senator Gwendolynne Moore, 4th Senate District; Dodge County District Attorney Patricia Ramirez; Gerard Randall, Chief Executive Officer, Private Industry Council of Milwaukee County; State Representative Peggy Rosenzweig, 5th Senate District, Wisconsin State Patrol Superintendent David L. Schumacher; Julia Taylor, Executive Director/Chief Executive Officer YWCA of Greater Milwaukee; Associate Professor of Law Phoebe Weaver Williams, Marquette University Law School; City of Madison Police Chief Richard Williams; Kenosha County Sheriff Larry Zarletti; and ex-officio member Letecia M. Smith, Chief Court Administrator, Milwaukee Municipal Court.¹⁷

Subcommittees were created as needed including a Subcommittee on the Public Hearing of March 24, 2000, at Marquette University Law School Co-Chaired by Senator Moore and Julia Taylor; the Subcommittee on the Public Hearing of May 23, 2000, at the University of Wisconsin at Stevens Point Co-Chaired by District Attorney Patricia Ramirez and Superintendent David Schumacher; the Subcommittee on Outreach to Law Enforcement chaired by Judge White; and the Subcommittee on Public Outreach which was chaired by William Clay. Judge White, Attorney Bias, District Attorney Ramirez, Superintendent Schumacher and Professor Williams were designated as writing team members responsible for drafting components of this Report.

¹⁷ See Appendix 2 for short biographies on each Task Force member.

D. TASK FORCE MISSION

At the first Task Force meeting, the mission statement of the Task Force was unanimously accepted by its members. A premise question posed by members of the Task Force at its inception was; “How do we define racial profiling?” From the very beginning, developing an understanding of a good definition for racial profiling was a principal concern of the Task Force. Because of the diverse perspectives of the Task Force members, there was considerable difference in opinions both whether profiling occurs in Wisconsin and on the extent to which the problem exists in Wisconsin. Consequently, the Task Force adopted the mission statement and proceeded with an educational and investigative approach to understanding the dynamics of the issue on a national scale, and in Wisconsin.

The mission of the Task Force, which was adopted by the Task Force on January 11, 2000, is:

- To study whether and to what extent there exists a pattern or practice of law enforcement traffic stops based on racial profiling;
- To determine and examine public perceptions on this issue;
- To collect and analyze traffic stop data; and
- To explore solutions and make recommendations to the Governor and other appropriate entities by December 2000.

E. METHODOLOGY

The primary method used by the Task Force to gather information about the experiences and perceptions of citizens was public meetings and hearings. The Task Force determined that public meetings and hearings were effective tools used by a number of other states conducting similar efforts. The Task Force used a number of different formats and different settings for the meetings and hearings. These meetings and hearings are a valuable portion of the Task Force’s information and sources for asserting the recommendations listed *supra*. The public hearings and meetings constitute an effort to collect information from those with experiences in which they believed contacts with law enforcement involved racial profiling, and from national and local experts experienced in evaluating the issue of racial profiling.

In addition to the meetings and hearings the Task Force solicited comments from the public of experiences with law enforcement by making available a form for use by

anyone who wished to provide written reports to the Task Force.¹⁸ The “public comment” form provided some direction on the purpose and mission of the Task Force and some guidance to the public for communicating with the Task Force on this issue. The forms had a post office address so they could be returned to the Chair of the Task Force.

F. APPROACH

Working with an aggressive schedule, the Task Force immediately committed to developing an inclusive and unbiased professional approach to explore the issue in Wisconsin. In order to address the concerns raised across the nation, in Wisconsin communities and during the legislative process, the Task Force adopted an educational, investigative, and outreach campaign by inviting input from national and local experts, citizens, community representatives, and law enforcement management and union officials. The subject areas explored included, definitions of various concepts related to understanding the issue of racial profiling, data collection, the federal pattern or practice law governing police misconduct, law enforcement officials experienced in voluntarily collecting data in motor vehicle stops including race and ethnicity, and local law enforcement experts on training, policy and complaint procedures. The Task Force initiated activities to invite and encourage citizens across the State and law enforcement in Wisconsin to provide the Task Force with their input and opinions and experiences on this issue.

Evaluating the materials and opinions from this process assisted the Task Force in examining the accountability and technological systems used by Wisconsin law enforcement in related areas, and with its understanding of the public perception and experience on this issue. The Task Force methodology of engaging the Task Force members and the law enforcement and broader community in an educational model was given serious application because of the impact that the outcome of such an examination could have on the community and law enforcement relations throughout the state.

G. PRIMARY ACTIVITIES OF THE TASK FORCE

1. Educational Initiatives

The Task Force utilized educational and investigative methods to define whether and to what extent racial profiling exist in Wisconsin. Methods included presentations

¹⁸ See Appendix 3 for copies of the Task Force comment forms.

from national and local experts of academic and law enforcement officials experienced in the study, investigation, prosecution, and resolution of racial profiling. The Task Force also extensively examined the educational, record keeping, management systems, and policies of state and local law enforcement agencies in Wisconsin that are relative to the issue of racial profiling.

2. Community and Law Enforcement Outreach

The Task Force undertook initiatives to assess real and perceived racial discrimination in law enforcement stops in Wisconsin including:

Inviting numerous public/community agencies, representing a broad constituency of groups to offer their views at a public forum;

- a. Inviting the executives of over six hundred law enforcement agencies in the state to an open forum focusing on the legal, financial, and social impact of racial profiling on communities and law enforcement agencies;
- b. Receiving comments, statements of positions, and recommendations from the Wisconsin law enforcement community;
- c. Conducting a statewide forum utilizing videoconferencing through the Wisconsin Technical College Network in thirteen different cities, for the purpose of soliciting comments from the public;
- d. Distributing a comment form to members of the public, upon request, to facilitate written comments about their experiences with law enforcement;
- e. Following outreach through nonprofit agencies that also offered opportunities for the public to comment on their experiences with law enforcement; and
- f. Examining media reports on the issue.

3. Information of Statistical or Empirical Research

The Task Force did not perform a quantitative review of law enforcement records of contact with citizens. The barriers to statistical research included the low frequency with which race data is collected in Wisconsin; challenges of coordination of data between the local and state systems; the absence of technology and adequate data systems to consistently collect comparable and relevant data across jurisdictional lines; and the costs of completing or conducting a study of this magnitude. The Task Force consulted with experts such as Dr. John Lamberth, Steven Rosenbaum, and others on the necessity for credible comparative data such as internal and external benchmarks; these

comparative data must conform to the types of particularized police activity under review, such as motor vehicle stops.

H. DEFINING THE PROBLEM

In this report the Task Force concentrates solely on racial profiling in traffic stops. The Task Force acknowledges that traffic stops are only one part of total law enforcement officer-citizen interactions. In order to reach an attainable conclusion and to make meaningful recommendations, the Task Force decided to limit its mission to traffic stops. The Task Force did not offer any formal definition of racial profiling in its invitations and announcements for the hearings and public meetings. Among those citizens, organizational representatives and law enforcement officials who provided comments regarding their views, perceptions and or experiences on the issue, the Task Force allowed those presenters to use their own understanding of the meaning of racial profiling.

A law enforcement officer may legally initiate contact for any violation of the traffic laws for a traffic stop. The comprehensive nature of our traffic laws makes it nearly impossible to travel in an automobile without committing at least a technical violation of the laws of the State of Wisconsin.¹⁹ If every driver is at some point guilty of some infraction of the traffic laws, whom law enforcement officers chose to stop becomes a very important question. Some of the information presented to the Task Force indicates that some citizens believe that issues of race and ethnicity are factors in some traffic stops. Many of the procedures employed by law enforcement agencies are in place to ensure the safety of the officers and of the citizens involved, and to aid the officers in their charge of apprehending criminals. However, if race is used by a law enforcement officer as a determining factor when deciding whom to stop [other than for the purpose of specific identification of a suspect], that officer unfairly subjects that person to the officer's wide discretion.²⁰ Racial profiling incorrectly relies on the assumption that some individuals are more likely to be engaged in criminal behavior because they are members of a racial or ethnic minority. If those individuals believe that they have been detained because of their race or ethnicity, their perceptions do not only affect their

¹⁹ See David A. Harris, *Car Wars: The Fourth Amendment's Death on the Highway*, 66 Geo. Wash. L. Rev. 556, 565-68 (March 1998).

relationship with law enforcement. They also affect the perceptions of every individual who hears their story.

I. INDICATORS AND PERCEPTIONS OF RACIAL PROFILING IN WISCONSIN

1. An overview

This section documents public perceptions and experiences with racial profiling in law enforcement traffic contacts. Working within a limited time frame and with limited tools, the Task Force focused its inquiries regarding perception into a qualitative sociological framework. The Task Force held a number of public meetings to gather anecdotal evidence of the perception of racial profiling as well as expert opinions on how to conduct a profiling study and to best obtain law enforcement input. Personal anecdotes of individual citizens of Wisconsin, institutional commentary, and press commentary expressing broad based perceptions of racial profiling have led the Task Force to conclude that further study is needed to fully address the problem.

The information provided by the hearing participants in both the public forums and in writing varied in content and focus. Although the Task Force attempted to limit the solicitation of information to the subject area of perception or experience with racial profiling in law enforcement traffic stops, some complaints fell outside the scope of its investigation. Some citizens offered accounts of police contacts in situations other than motor vehicle stops. The Task force heard from pedestrians who were stopped, citizens who were not involved in traffic matters but were detained by police officers, and citizens who shared perceptions or experiences with other segments of the criminal justice system and society in general. The information provided to the Task Force in these three types of complainants is not summarized in this report.

A number of the frequently heard complaints involving motor vehicle stops noted at the hearings, meetings or from the written correspondence are emphasized in this report. The Task Force did not make any effort to verify information provided by the participants at public hearings or in written communications. Individual perceptions are presented from the perspective of the participants and do not represent the Task Force member perspectives.

²⁰ U.S. Const. Amend. XIV § 1.

2. Anecdotal evidence as a basis for change

The Task Force first focused its inquiries on studies performed in other states and the methods used to conduct those studies. The Task Force held a number of public meetings for the purpose of gathering anecdotal information of the perception of racial profiling, expert opinions on profiling studies, and law enforcement response and input. Personal anecdotes of individual citizens of Wisconsin, institutional commentary, and press commentary expressing broad based perceptions of racial profiling have led the Task Force to conclude that racial profiling is likely a problem in Wisconsin. However, the available information does not address the extent of the problem.

The qualitative approach used by the Task Force to understand the problem was the only approach available to assess the “perception and comment information” that the Task Force received from citizens, community-based organizations and law enforcement. The evidence collected by the Task Force to date lends itself appropriately to the qualitative method, defined by Sociologist Martin Hammersley as: “Research using unstructured forms of data collection both interviewing and observation and employing verbal descriptions and explanations rather than quantitative measurement and statistical analysis.”²¹ The Task Force divided the presentation of the evidence it collected into two broad categories: (1) the complaints of individual citizens and organizations; and (2) press coverage of the issue. The purpose of this section of the report is to illustrate the various perceptions of the issue of racial profiling in traffic stops from the perspectives of citizens in our state.

²¹ Hammersley, The Dilemma of Qualitative Method: Herbert Blumer and the Chicago Tradition, Routledge, New York, 1989, at 2 (positing the arguments for qualitative research, Hammersley has commented extensively on the use of qualitative research in sociological studies:

Human behavior is complex and fluid in character, not reducible to fixed patterns; and it is shaped by, and in turn produces, varied cultures. Adopting this conception of the social world, qualitative method often involves an emphasis on process rather than structure, a devotion to the study of local and small scale social situations in preference to analysis at the societal or the psychological levels, a stress on the diversity and variability of social life, and a concern with capturing the myriad perspectives of participants in the social world; see also Bailey, Methods of Social Research, The Free Press, New York, 1978, at 51.

“I tell my children to respect law enforcement authorities. However, I tell them to be very cautious. In all frankness, I tell them to be very cautious because of what they look like and because of what they are, and to be extra careful, and, you know, that is a reality. That’s a perception, but that is what we live with.”²²

***Citizen comment from
Task Force forum***

J. ANECDOTAL EVIDENCE OFFERED BY INDIVIDUAL CITIZENS AND CITIZEN’S GROUP

1. Introduction

The following accounts were offered by members of the public, by members of the law enforcement community of Wisconsin, and representatives of various public and private organizations. The Task Force thanks everyone who overcame concerns about addressing such a sensitive, serious, and potentially volatile issue and contributed to this process. One of the first things the Task Force learned was how difficult creating a public dialogue on the subject of racial profiling is. Each of the key groups, the public and law enforcement, was initially reluctant to address the Task Force for fear of retribution, so eliciting testimony to use in the report was a challenge.

The testimony of individual citizens and citizen based groups revealed a general fear of law enforcement reprisal for offering testimony about what they perceive the officers are doing. Some relayed a feeling of powerlessness when they were the subjects of a police stop. Some recalled experiences in which they felt officers treated them disrespectfully or were rude to them. Some reflected their perceptions of the negative feelings of their minority groups in general toward law enforcement. Included in this report is testimony that the Task Force felt was representative of the body of evidence provided.

2. Transcript testimony from Task Force meetings

An attorney recounted the experiences of her co-worker. The attorney relayed the experiences of an administrative law secretary, who had been stopped three times. She believes that the primary reason for each of the traffic stops is race. In one incident a suburban police officer stopped her for driving too slow during a blizzard when she was driving 30 m.p.h. On another occasion, suburban police officers stopped her for speeding when she was driving 45 m.p.h., immediately after a stop sign. In the third

²² Comments from member of the public at the May 2000 Task Force Public Forum; Exhibit 14.

situation, she reported that a police officer from another suburb stopped her for driving a new car without license plates. Her young daughter was in the car. She showed the officer the title to the car and her license. The officer was not persuaded, and proceeded to search her trunk and requested that she come to the station. She was fingerprinted and the police took her shoes and belt while her daughter waited and watched. She was not arrested.²³

Representatives from the National Association of Colored People (NAACP) commented on perceptions of racial profiling. Citizens have made complaints of racial profiling to the NAACP. Many of those who call in never follow up with formal written complaints to the appropriate police department, as they are afraid of retaliation.²⁴ Another member stated that the organization attempted to garner signatures for a petition requesting that an urban police agency compile traffic data, it found few willing due to fear of law enforcement reprisal in the communities.²⁵

A European mother of children of African-American descent relayed experiences of racial profiling of family members to the Task Force. Her son, who is an honors college graduate and a ballet dancer, went to pick his mother up for lunch. He was stopped because an officer thought he looked suspicious. Her son was forced to stand on the corner while the officer ran his record. She came out of her office during that time. She, too, was made to wait. After lunch, they went to the Police Chief's office to lodge a complaint. The Deputy chief they spoke to told her son to "get used to it."²⁶

The Chair of the Mayor's Task Force on Race Relations for the City of Madison shared some of the findings of that group. He recounted several incidents of profiling offered at the public meetings of the Mayor's Task Force on Race Relations in Madison. He relayed these stories as a reflection of "perceptions and trust" of the law enforcement community. The first is a white woman from an affluent neighborhood who gave an account of what she perceived as a case of racial profiling. She said that her son owns a "beat-up old car with a bad muffler" that he drives to and from her home without ever being cited by the police. Her son's best friend is their next-door neighbor, an African-American who drives his father's BMW. He is stopped approximately twice a month. She recounts being told that he was consistently asked, "what are you doing in this neighborhood?"

Other accounts came from mechanics employed at upscale automobile dealers. The mechanics drive repaired cars to make sure they are fixed. The white mechanics rarely get stopped. The mechanics of minority descent recounted being stopped routinely because they were driving Saabs or BMWs.

He recalled the story of a group of African-American and Hispanic kids who were on their way to an event at a sports arena and took a route through a high crime

²³ Exhibit 12. Transcript of March 24, 2000 meeting, pp. 123-126.

²⁴ Exhibit 12, p. 126.

²⁵ Exhibit 15, Meeting notes of June 7, 2000 meeting.

²⁶ Exhibit 12, p. 127.

neighborhood. An officer stopped them and the first question he had for them was “Who’s Your PO [parole officer]?”²⁷

A law enforcement executive shared two incidents with the Task Force, one of which is reported below. He was stopped while driving an unmarked squad car. The reason for the stop was expired tags. He was at an intersection in the middle lane between two white drivers. The incident occurred at 7:30 a.m. His squad car did have the required 2001 stickers, but the plates had expired because of a mix-up in the detective bureau. The law enforcement officer (driver) asked why his plates were run when the sticker indicated the plates were valid. The officer conducting the stop responded that as a matter of routine “we just run the plates” regardless of any law violation. This law enforcement believes that he was singled out and his plates were run because he was the only African-American of the three drivers in the intersection.²⁸

A college student spoke of an incident of a race-based stop. The second-year African American electrical engineering student was visiting a friend in a southeastern Wisconsin town with several Russian friends. They were stopped by an officer who assumed they were drunk, took their names and gave them each a breathalyzer test. The officer kept them standing outside in the cold for forty minutes, and then told each of them they would receive tickets. While they were standing outside, the student recounts that the officer asked them questions about why they were not drinking, about the girls at the party, and about whether he thought the officers were discriminating against him. He answered affirmatively. A Sergeant then arrived and told them to leave, stating that the students were making inappropriate remarks.²⁹ He was the only one to be given a ticket.

A prosecuting attorney addressed perceptions of racial profiling and systemic disparities. A prosecutor testified that he believes that much of the problem is the result of well-intentioned people trying to enforce the laws. He recalls a conversation with a neighbor who is a municipal judge. The judge observed that 80% of the people that appear in his court on municipal citations, including violations of the traffic code, are African-American. The prosecutor analogized the problem to the pond that is over-fished. The African-American communities are so heavily policed that it seems obvious to the members of those communities that racial profiling occurs. He recommends issuing fewer citations for minor violations. The mood of the community reflects the number of citations issued. The higher the percentage of those affected by law enforcement, the more natural and obvious the perception of racial profiling becomes for those individuals.³⁰

A community activist from a northeastern city recounted several stories told to him by minorities in his community. He reported receiving numerous calls from Asian, Hispanic, and African-American members of the community reporting stops for such minor violations as dirty license plates and broken taillights. He urged law

²⁷ Exhibit 11, p. 109.

²⁸ Exhibit 18. Transcript of September 6, 2000 meeting.

²⁹ Exhibit 15.

³⁰ Exhibit 15.

enforcement to engage the community in a dialogue over these issues. Stating that racial profiling is a problem that is more than perception, he encouraged law enforcement to get involved in addressing the community problems by addressing harassment issues.³¹

A third-year law student offered an experience of his contact with the police.

He recounted his perceptions of the fear he sensed in an officer who stopped him late one night. He connected that officer's reaction to him with a general perception of the fear of African-American males by the police and the public. The student felt that any African-American male was a suspect at that point. He feels that the root of the problem is that the police fear African-American men, so that officers enter every contact with heightened senses. He feels that the tension between the police and the members of his community must be addressed through education, both of the officers and the citizens.³²

An American Civil Liberties Union (ACLU) employee testified to reports collected by ACLU employees of racial profiling perceptions of Asian Americans and Hispanic citizens. He received a report from citizens in northern Wisconsin that members of the Asian-American community felt that the police treated them rudely after being stopped. He also recounted examples in which the police ticketed the Asian-American drivers involved in accidents while letting the white drivers go. His second story is from east central Wisconsin where Hispanic residents feel that police hoping to find illegal aliens unfairly target them. He testified that Hispanics are continually asked to produce identification, because the arrest of someone using a fake identification is a felony.³³

A former tribal judge from northern Wisconsin offered his perceptions of the problem in a Native American community. He opened by expressing his feeling that coming before the Task Force felt like "I'm Daniel in the lion's den here." Nonetheless, he wanted to offer his perception of profiling in his community. His minority makes up about ten percent of the total population in his community. At any given time, members of his minority group comprise a "significant likely majority population of the local [jail] facility there." It is not uncommon for all the inhabitants of the county jail to be members of his minority group. The judge affirmatively asserted that the Task Force would not receive complaints from his community, because it is not in their nature/culture to complain. He says that should not deter the Task Force from extending its recommendations to his community, because the dearth of complaints is not indicative of the nature and extent of the problem.³⁴

An urban worker offered his perceptions on racial profiling. To get to work he travels from a predominantly minority neighborhood into a downtown area. He said a sign in the cafeteria of his workplace advises minority employees not to travel certain streets on the way to work, because the police would stop them. The sign was placed

³¹ Exhibit 15.

³² Exhibit 15.

³³ Exhibit 15.

³⁴ Exhibit 14, pp. 149-54.

there by the company and specifically identified a particular police department. He also testified that officers sit on the county line and regularly pull over cars containing minority passengers. “[I]f you go with more than two or three blacks in your car, you will be stopped. They literally sit right at the county line and wait for us.”³⁵

A former driving instructor is pulled over for a “failed emissions test.” She was followed for about ten blocks before the officer pulled her over. When she asked the officer why she had been stopped, the officer responded “did you know you had failed your emission test last year?” When she asked where the officer got her information, she was told “I phoned in.” After showing the officer the paperwork indicating that the car in fact passed emissions, one of her children passing in a car stopped to ask what was happening. When she exited her car to talk to her child, the officer jumped out of the squad and told her to get back into her car. Soon after, another squad car pulled up and the officer from that car got out, looked into her car, and walked past her without saying a word. In the end, the officer who initially stopped her issued a warning, and told her that she needed to go to the police station and present her emissions test because it wasn’t on the computer. When she went to the station to show her emissions test and convey her frustration, she said, “nobody really wanted to listen.”³⁶

3. Written responses from the public

A businessman is stopped for missing front license plate. He counted fourteen passing cars without front plates as the officer processed his ticket. The officer informed him that missing front plates were a common reason to pull over drug suspects. When the businessman went to the station after being issued the citation, the officers he encountered were “offensive, rude and spoke in a confrontational manner.” In a later conversation with the officer who ticketed him, the man reported that the officer admitted “he knew he was in trouble when he told me he used the missing plates to stop me as a suspected drug dealer. He went on to admit that he didn’t stop me because he thought I was black; he thought I was from the Middle East until seeing me closer. The businessman further described the incident as “inconvenient, disrespectful, humiliating, and harassing. It further chills my sense of fair treatment for African Americans and other racial minorities.”³⁷

Hispanic citizen shares her experiences during a traffic stop. A Hispanic woman was pulled over on a bridge. She admits that she was traveling 43 M.P.H. in a 30 M.P.H. zone. She also admits that she could not find her driver’s license, but that she provided the officer her name, address, and date of birth. She waited in the car with her 12 year-old daughter while the officer ran her license. The following is an excerpt from her letter to the Task Force:

“He went back to his car and when he came back he said, ‘step out of the car lady you’re under arrest for lying to me’. My daughter started crying and I asked him what he

³⁵ Exhibit 19. Transcript of October 18, 2000 meeting, p. 173

³⁶ Exhibit 19, p. 181.

³⁷ Exhibit 5.

was talking about. He said ‘lady you lied to me you gave me the wrong information, you don’t have a license.’ I started to cry I told him but I do and I do not have any tickets or a bad record. He proceeded to open the door, as he was doing that I asked him did you write the information correctly. He said ‘Of course I did I’m not stupid.’ As he was pulling me out of the car I started to repeat my information, begging him to please recheck because I did have a license. It turns out he had written my birth date incorrectly. My daughter was screaming and crying for him not to arrest me. He gave me a speeding ticket and turned and walked away without ever saying one word to me.”³⁸

An African American woman complains about treatment at a traffic stop. Another letter recounts a 9 p.m. stop in a suburb. The driver was traveling home from work when she noticed police lights in her rear-view mirror. She did not think the lights were for her, because she was not speeding. After a few blocks, she pulled over and noticed that there was more than one police car behind her. The officer told her that she did not have her headlights on. She states that the officer asked her why she hadn’t pulled over immediately, and then asked her nastily whether she knew what she was supposed to do if she saw flashing lights behind her. The officer ran the car tags and then asked her whether she had bought the car. The officer told her she was getting the ticket because she had an attitude. It cost her over two hundred dollars and 4 points from her record. She feels very strongly that the reason she was issued a ticket for such a minor offense and treated rudely was that she is black.³⁹

Two letters of citizens to American Civil Liberties Union (ACLU) complaining of treatment. The Wisconsin Chapter of the American Civil Liberties Union provided the Task Force with letters describing incidents of racial profiling.

Dirty license plate: The son of a county official and his African American friend were stopped while driving on a city street. They were playing rap music with some anti-police lyrics, and after being followed for six blocks, they were pulled over for having a dirty license plate. The officers also asked why the passenger wasn’t wearing a seatbelt. The driver then called his father (the county official), who arrived and asked the officers what was happening. The officers told him that they were pulled over because they were punks and they were playing anti-police music. The officer then told the county official that they (the police) can “make up whatever they want to stop these punks.” He was also told that his son might be okay, but that he should choose better friends. The reason the county official came forward with the complaint is that he was shocked that the police were so comfortable describing their practice of stopping cars with black occupants. He was especially shocked that the officers told him about their practices after he informed them of his position with the county.

³⁸ Exhibit 5.

³⁹ Exhibit 5.

Couple held for one hour for defective muffler. An African American couple reported that they were stopped while driving slowly along a city street, looking for an address. In his initial approach, one of the officers had his hand on his gun. The other officer informed the driver that he was driving as though he was drunk. When he informed the officer that he didn't drink, he was told to start the car. When he did, he was told that his muffler was too loud. At this point, the passenger asked for a pen to take the officer's information, and informed them that they had no probable cause to stop or detain them. The officer informed her that he wouldn't provide her with a "weapon," referring to the request for a writing pen. The couple was held for one hour, a supervisor was called in, and they were eventually issued a ticket for a defective muffler. Subsequent to lodging a complaint about the stop the defective muffler citation was dismissed. After taking part in a conciliation hearing, the couple never received any apology or any information at all that their complaint was ever addressed.⁴⁰

An administrative law judge (ALJ) alleges police treatment based on ethnicity. In a detailed written summary of her version of the event an ALJ reported that she was driving down a city street when she noticed several police cars and a large group of people lining the street. She pulled her car over to see if she could offer assistance. When she asked why such a large number of officers were present, one officer responded that everyone waving flags out of their cars was "openly breaking the law." She spoke to the man they had in custody, and then returned to her car. As she approached her car, she noticed two officers on either side of a car containing a frightened looking Mexican couple. She identified herself again including the fact that she is Mexican. She indicated that the officer turned to her and began to yell, getting closer to her, threatening to arrest her. She repeated her request to help, and that she simply wanted to know what the problem was. She alleged that the officer then locked her arm, threw her to the ground and handcuffed her. She stated that the officer placed his foot on her back and just as she thought he might kick her, she heard a voice say, "cool it." She thinks it was another officer. She is 60 years old, 5 feet 4 inches tall and approximately 120 pounds. She indicated that she spent at least thirty minutes in custody before the officer who had detained her approached the car, wrote her a ticket, and released her.⁴¹ She is convinced that the entire "operation" was an effort by the police to squelch a traditional ethnic celebration, and that they were targeting and randomly detaining Mexican youths.

K. WRITTEN RESPONSE FROM THE INDIVIDUAL RIGHTS AND RESPONSIBILITIES (IRR) SECTION OF THE STATE BAR OF WISCONSIN

A member of the Individual Rights and Responsibilities (IRR) Section of the State Bar of Wisconsin testified before the Senate Judiciary Committee on March 7, 2000. The testimonials offered by citizens and others before the Senate Committee on March 7, 2000 were not recorded. He offered those same comments to the Task Force in a letter

⁴⁰ Exhibit 7.

⁴¹ Exhibit 5.

dated October 3, 2000. This state bar section offered a response to a provision in the proposed legislation that referred to a requirement that the race or ethnicity of certain persons in motor vehicle stops be recorded:

“The bill contemplates that the Department of Justice will analyze the data collected to determine “[w]hether the number of motor vehicle stops and searches of motor vehicles operated or occupied by members of a racial minority compared to the number of motor vehicle stops and searches of motor vehicles operated or occupied solely by persons who are not members of a racial minority is disproportionate...” I don’t see how this determination can be made unless the races of the operator and all passengers are recorded. Moreover, vehicles driven by a white person, but carrying a minority passenger, might be more likely to be targeted by police than vehicles carrying or containing persons all of the same race. The data collection provisions as drafted will not allow for detection of this possibility unless the minority passenger happens to be searched.”⁴²

L. THE PUBLIC’S PERCEPTIONS OF RACIAL PROFILING AS REFLECTED IN RECENT LOCAL PRESS COVERAGE OF THE ISSUE

Because of the challenges of time, resources, and the relatively low number of citizen’s reports of perceived racial profiling, the Task Force recognizes that other available sources of information that captured the public’s perception of the problem of profiling should be examined. The following is a brief synopsis of newspaper articles and editorials that address the issue of racial profiling in Milwaukee and Madison. As evidenced by the quantity and frequency of articles on the subject, the perception of racial profiling prevails in the media and in the community. The cited articles discuss racial profiling in a variety of ways. Many relay anecdotes of victims being stopped for “driving while black or DWB.” Media accounts of these incidents serve as an alternative source of anecdotal evidence for the Task Force.

Another category of articles updates the community about steps being taken to identify and solve the problem. The Task Force, local governments, public defenders, and citizen groups have all addressed the problem throughout the past year. The balance of the articles discusses the perception citizens of Wisconsin hold regarding this issue.

⁴² Exhibit 6.

1. Feature articles

- The Urban League of Greater Madison, at a meeting celebrating African American heritage, listed racial profiling as one of its concerns.

Community Celebrates Heritage, Wisconsin State Journal, May 14, 2000 at p. 1C.

- On October 1999 Chief Jones banned police from routinely asking drivers for permission to search their cars during routine traffic stops. The Chief stated that the practice was probably an example of singling out drivers for “driving while black.” “It happened to young black and Hispanic males, but it wouldn’t happen to [a white reporter]. . . . But if you were black on Teutonia and Center you’d get stopped.”

Chief Disputes View Effort is Race-Based, Milwaukee Journal Sentinel, June 18, 2000 at p. 20A.

- A black male was stopped by an officer who thought he “looked suspicious” as he was searching for his girlfriend’s dog. He stated, “I was guilty just because I was a black man walking down an alley . . .”

Minorities Say Police Discriminate on Job, Milwaukee Journal Sentinel, June 8, 2000 at p. 3B.

- A mother relayed her fears about her son’s driving alone on the streets of Milwaukee. Her son, an African American, was pulled over three times while he held his probationary license. She limits her son’s driving because she is concerned about confrontations with the police. Her second-hand experience with racial profiling extends to son-in-law, who has been stopped seventeen times by city and suburban police while commuting to work.

... Speakers at a community meeting ‘poured out’ stories of profiling. Many claimed the police pulled them over because they “fit a description.” “Speakers complained that police conducting traffic stops have a mind-set that blacks must be guilty of something.” Black professionals present at the meeting commented that appearances make a difference. “When in suit and tie, they are less likely to be viewed suspiciously, but in casual clothes they have experienced mistreatment by police. “A drive in the suburbs is even more likely to end in a police stop ...”

Residents Relate Racial Profiling Incidents, Milwaukee Journal Sentinel, May 21, 2000 at p. 2B.

- The Milwaukee Common Council has been studying the issue of racial profiling. After a May 2000 report addressing the racial breakdown of tickets written by police, the Council is unable to answer the question of whether racial profiling exists. The

limited data renders a finding on racial profiling impossible; an additional \$300,000 is needed to properly collect and analyze data.

Valid Racial Profiling Data Could Cost \$300,000 to Compile Now, Officials Say, Milwaukee Journal Sentinel, May 12, 2000 at p. 1B.

- “A report on the racial breakdown of tickets by police shows 63% in the last quarter of 1999 went to African-Americans, but the report itself says the numbers collected are essentially useless in determining if racial profiling occurs.” An alderman and former police officer stated that he does not believe racial profiling occurs in Milwaukee, but admits that some of his constituents do believe it occurs.

63% of City’s Tickets Issued to Blacks; Report Says Findings Give No Clue about Profiling, Milwaukee Journal Sentinel, May 5, 2000 at p. 1B.

- A young black male testified before the state Senate Judiciary Committee that he has been stopped often because of his race. He stated, “I am scared to drive at night in my car. . . . If you are a young person of color who drives, it can cost you an extra \$3,000 to \$4,000 while you are in college, as it did me, strictly due to racial profiling.”

The chairman of the Madison Task Force on Race Relations commented that the racial profiling problem is not limited to Milwaukee. He relayed a story about a white teenager living in an affluent suburb who was never stopped by police while he drove a beat up car. His teenage African American neighbor, however, was stopped routinely while driving his family’s BMW.

The executive director of the Wisconsin chapter of the ACLU told a reporter that the problem is not limited to Milwaukee or Madison. “We get complaints from all over, from communities as diverse as Waukesha, Janesville, Green Bay, Glendale, not just Milwaukee and Madison.”

Proposal to Track Racial Profiling by Police Advances, Milwaukee Journal Sentinel, March 8, 2000 at p. 2B.

- Public Defenders are attempting to “shut down” the police department’s ticketing of minorities through allegations of racial profiling. They requested a delay of several months to study the problem of racial profiling in a case involving an African-American bicyclist stopped because his bike was not licensed.

Public Defenders, Prosecutors Clash Over Profiling Issue, Milwaukee Journal Sentinel, December 2, 1999, at p. 1.

- Approximately twenty people gathered to begin collecting 25,000 signatures in a campaign against racial profiling. The local group is petitioning for an ordinance requiring police to collect race data when ticketing. This comes in response to the Governor’s veto of a bill that would have required police to collect race, gender, age

and ethnicity data during traffic stops. The data is needed to properly analyze the racial profiling problem.

Campaign Against Racial Profiling Launched, Milwaukee Journal Sentinel, November 14, 1999 at p. 3.

- An author describes the reaction he received to his article on “driving while black.” One response detailed a story about a white man whose black co-worker is stopped at least once a week going to work in the suburbs because he drives a Cadillac. The author states, “There were more – a lot more – but that sampling is enough to show “Driving While Black” is alive and well.”

DWB Touches a Telling Nerve Among Readers, Milwaukee Journal Sentinel, October 21, 1999 at p. 1.

2. Editorials

- An African-American male wrote a letter published in the Milwaukee Journal Sentinel relaying an incident of racial profiling. He claims he was stopped by an officer who believed he was lost. He states, “Those who doubt the existence of racial profiling point to the fact that there have not been many complaints about the matter. The truth is that most individuals who are victims of racial profiling don’t make as much noise as they should. For many individuals, racial profiling is a fact of life that will never go away.”

No More Silence about Racial Profiling, Milwaukee Journal Sentinel, August 29, 2000 at p. 14A.

- The Milwaukee Journal Sentinel printed four editorials that addressed the issue of racial profiling. One writer states, “My experience in this petition drive is to collect signatures in a campaign against racial profiling which is absolutely rampant in this city. I have heard countless anecdotes of arbitrary stops of residents simply for being the ‘wrong’ color and at the wrong place at the wrong time.”
- Another writer of African-American and Filipino descent questions, “Is it truly necessary to pull me over while driving through West Allis, West Milwaukee or Wauwatosa for a ‘routine check’ or because I ‘looked suspicious’ or ‘fit a profile’?” This gentleman writes that he is stopped three to four times per year.

Can Racial Profiling Help End Ignorance?, Milwaukee Journal Sentinel, December 6, 1999 at p. 11.

- In a series of editorials, writers applaud the confrontation of the “driving while black” issue. “Racial profiling is as endemic in Milwaukee today as it was during the years Harold Breir was police chief. The only difference is it’s now disguised in a ‘soft bigotry’ package, so that race-based policing practices appear to be covert rather than

overt, the result of which is erosion of confidence in Milwaukee Police Department law enforcement among many of Milwaukee's minorities."

State Must Do What It Can to Stop Racial Profiling, Milwaukee Journal Sentinel, October 18, 1999, at p. 13.

- Racial profiling is a "black and brown tax" for citizenship in America, and it doesn't get any easier to take just because most police departments insist it doesn't happen." The NAACP and ACLU urged the Governor to pass a budget provision requiring the collection of data on race, ethnicity, age and gender. The author points out that whites may not believe racial profiling is a problem because they are not subject to the same blanket of suspicion.

Racial Profiling Problem Weighs Heaviest on Those Affected, Milwaukee Journal Sentinel, October 17, 1999 at p. 3.

M. CONCLUSIONS DRAWN FROM PUBLIC OUTREACH

Why are these stories important? What do they prove? Taken individually, they document that some citizens perceive that individual law enforcement officers, in isolated traffic stops, have used the race of the driver or passenger as a pretext for stopping the vehicle, leading to the issuance of citations, searches of the vehicles, and/or the detainment or arrest of the drivers or passengers. Taken as a whole, they provide evidence that some form of racial profiling likely exists. The available data does not address the extent of profiling nor does it specifically address whether the practice is institutional—based on patterns or practices of police departments, or individual—based on a failure in the training and supervision of individual officers that leads to the unfair treatment of minority citizens.

Citizen complaints conveyed to the Task Force shared common characteristics. The four most common types of complaints include:

- (1) Traffic stops made because the driver "did not belong" in the car he/she was driving or in the neighborhood in which he/she was stopped;
- (2) Rude behavior and negative law enforcement attitudes during traffic stops;
- (3) Language and communication barriers; and
- (4) Ineffective complaint procedures.

The Fourteenth Amendment to the Constitution of the United States guarantees that a state shall not "deny to any person within its jurisdiction the equal protection of the

laws.”⁴³ The practice of racial profiling is counter to the intended effect of the Equal Protection clause. The effects of racial profiling include an enforced distrust of “the system,” and a growing disenchantment in minority communities with governmental institutions in general. It is an important issue “not only because of the damage it does, but also because of the connections between stops of minority drivers and other, larger issues of criminal justice and race.”⁴⁴

Racial profiling causes a deep cynicism in the minority communities affected. Much of the anecdotal testimony reveals feelings of helplessness and fear of law enforcement as a result of these types of traffic stops. When innocent citizens are detained by law enforcement officers because of their race, it damages not only that person, but it touches everyone with whom that person relates his story. If a citizen is wrongfully subjected to a traffic stop and search of his/her automobile and threatened with arrest, it breeds the perception that law enforcement is not there to protect, but to harass and target. Some testimony reflects frustration with the methods employed by the law enforcement agencies in addressing the concerns of the citizens. In sum, the evidence points to a problem, which threatens the trust and cooperation of the community with the police force sworn to enforce its laws.

⁴³ U.S. Const. Amend. XIV § 1.

⁴⁴ David A. Harris, *Driving While Black*, 84 Minn. L.R. 265, 288 (1999).

“All education is a continuous dialogue – questions and answers that pursue every problem to the horizon.”⁴⁵

United States Supreme Court
Justice William O. Douglas

CHAPTER II

Governor’s Task Force On Racial Profiling Educational Initiatives⁴⁶

A. INTRODUCTION

During its meeting on January 11, 2000, the Task Force agreed that it needed more information about the nature, legal context and social implications of racial profiling. Specifically, the Task Force sought information that would assist its efforts in defining racial profiling and assessing the various aspects of this issue in light of our mission. Preliminary research identified an array of nationally acclaimed experts with diverse backgrounds and experiences in the study and research of racial profiling. These experts included legal scholars, regulatory officials and members of law enforcement from around the country, who appeared before the Task Force to share their work and experiences regarding the subject of policing and racial profiling. Over the course of the past ten months the Task Force heard oral presentations, received extensive written information and posed numerous inquiries to the experts described below.

B. PROFESSOR HERMAN GOLDSTEIN, an expert on policing⁴⁷

Professor Goldstein prefaced his remarks by declaring that he did not expect that any one on the panel could report that police in Wisconsin engage in racial profiling. Nor did he expect any panel member to know the magnitude of the problem. He further

⁴⁵ United States Supreme Court Justice William O. Douglas

⁴⁶ The primary authors of this Chapter were Phoebe W. Williams, associate professor of law, Marquette University Law School and Attorney Jennifer Bias, Director of Community Initiatives, State Public Defender.

⁴⁷ Herman Goldstein, Professor Emeritus, University of Wisconsin Law School served as the moderator for a panel of experts who appeared before the Task Force on February 22, 2000 and addressed the subject of racial profiling. Professor Goldstein has researched the subject of policing for the past forty-five years. He is the author of major treatises on the subject of policing, including “Policing a Free Society” and “Problem

indicated that it is extraordinarily difficult to conduct studies of racial profiling because of the various challenges associated with identifying an appropriate methodology for such a study. Nevertheless, Professor Goldstein emphasized that the perception of racial profiling is itself a matter of concern that warrants our attention. The substance of Professor Goldstein's comments focused on the history of policing. Describing an evolving police strategy that emerged from efforts to address urban crime and disorder, Professor Goldstein explained that rather than relying on responsive policing, police departments progressively used proactive measures during the 1950's to deter criminal conduct. Measures aimed at removing guns from the streets, such as stop and frisk, challenges, inquiries, and searches incident to arrests, [combined with other social issues, including urban racial segregation and the increasing migration of poor minorities from rural situations to urban ghettos], eventually led urban residents to resent the increased police presence. Such resentments along with other frustrations led to the protests and racial disturbances of the 1960's. As police departments became more aware that policing measures were tied to urban tensions, these departments began to curtail these practices, and instead began to implement community policing. However, the increase in drug use during the seventies and eighties led to public pressure to reduce crime. The courts, perhaps responding to this pressure, allowed law enforcement increasing authority in the use of a variety of search and seizure tactics, some of which employed deceptive methods, to curb criminal activity.

C. PROFESSOR DAVID COLE, a legal scholar on race discrimination⁴⁸

Professor Cole's contributions to the Task Force began with his defining racial profiling and discussing the legal and policing developments that led to the current problem. He also discussed addressing the problem and commented on methods employed to successfully combat the practice, referencing other jurisdictions that are currently dealing with profiling.

Oriented Policing.” In particular his research has focused on institutional aspects of policing. Exhibit 11. Transcript of February 22, 2000 Task Force meeting, p. 12.

⁴⁸ David Cole, Professor, Georgetown University Law Center, Senior Justice Fellow, the Open Society Institute's Center on Crime, Communities, & Culture, Legal Affairs Correspondence for the Nation. Professor Cole has extensively studied the problem of racial profiling with his research culminating in numerous articles along with the production of the book, “No Equal Justice: Race and Class in the American Criminal Justice System.” Exhibit 11.

Professor Cole's comments focused on the roles played by the courts and our culture in creating an environment conducive to racial profiling. Initially, Professor Cole defined racial profiling as "the use of racial generalizations" as the "critical concept" for law enforcement officials' determinations of "who to approach, who to investigate, who to stop, who to search or who to arrest". For Professor Cole it was "just as problematic" for police to use race as only one factor among many legitimate factors as it was to use race as the only factor. However, Professor Cole was careful to exclude from the definition of racial profiling the use race as a specific identifying criteria based on the description of a suspect.

Professor Cole provided an overview of how judicial decision over the last two decades, particularly those of the United States Supreme Court, "created the conditions for racial profiling by freeing up large areas of police discretion and by permitting the police to engage in a whole range of tactics without requiring individualized objective suspicion of wrongdoing."⁴⁹ He identified major areas where the Supreme Court has provided law enforcement with "unfettered" discretion: (a) consent searches and pretextual traffic stops; and (b) drug courier profiles.

In Ohio v. Robinette, the United States Supreme Court rejected any requirement that law enforcement officials inform citizens of their right to refuse a request to search the citizen's person or vehicle.⁵⁰ Further, in Whren v. United States,⁵¹ the Court also held that law enforcement can initiate traffic stops to investigate their suspicions even if those suspicions have nothing to do with traffic enforcement and even if there is no evidence of criminal behavior by the driver. The Court's holding in Whren, Professor Cole explained, allows law enforcement officials to engage in "investigatory confrontations" and accost drivers and their passengers for traffic violations that ordinarily would not result in police contact. In order to illustrate the impact of the Court's holding, Professor Cole offered an example to make his point: "In D.C you could be stopped for failing to

⁴⁹ Exhibit 11. Transcript of the February 22, 2000 Task Force meeting at which Professor Cole addressed the group.

⁵⁰ 117 S.Ct. 417(1996); In Robinette the Supreme Court rejected the argument that consent to search was not valid unless the driver was informed of his/her right to refuse.

⁵¹ 517 U.S. 806 (1996).

pay sufficient time and attention—which has been interpreted to include changing the radio station dial.”⁵²

Describing the drug courier profile as a law enforcement technique “purportedly based on the officers’ expertise that sort of narrow[s] down who in the community ought to be subject to suspicion,” Professor Cole demonstrated how indeed this narrowing strategy can include a broad range of lawful and legitimate behaviors. According to Professor Cole, the drug courier profile has included the following range of behaviors and characteristics: “carried no luggage, carried brand new luggage, carried a small bag, carried a medium-sized bag, carried two bulky garment bags, carried two heavy suitcases, carried four pieces of luggage, overly protective of luggage, disassociated itself from luggage, traveled alone, traveled with a companion, acted too nervous, acted too calm, made eye contact with the officer, avoided making eye contact with officer, wore expensive clothing, dressed casually, and my favorite, went to restroom after deplaning.” This broad range of unspecified, contradictory, common place behaviors and characteristics permits law enforcement officials to mask racial stereotyping with neutral, unspecified, flexible, and unconstrained criteria.

Professor Cole discussed certain legal prohibitions that could arguably address racial profiling. For example selective prosecution prohibits, prosecutors from using race as a determining factor when exercising their discretion to charge or prosecute a crime. However, Cole explained that such court challenges have been frustrated. Before individuals can discover if there exists evidence of racial discrimination by prosecutors they must first establish that prosecutors acted out of racial animus or treated similarly situated persons differently because of their race. Cole offered other examples illustrating the difficulties of demonstrating legal violations for racial profiling. Cole set forth what was in his opinion the strongest argument against racial profiling—“beyond the fact it is unconstitutional, beyond the fact it is bad policing, it destroys the legitimacy of the law enforcement system, and particularly destroys it among those people who are targeted by the profile.”

Disagreeing with Professor Goldstein, Professor Cole concluded that even without conducting any empirical study that racial profiling occurs in Wisconsin. He explained

⁵² Exhibit 11.

that he would find it “hard to believe that Wisconsin is somehow immune from the problems that all of us have.” Our culture he further explained reinforces a particular stereotyping: “namely, the identification of race particularly African American race and crime.” Professor Cole reasoned that this stereotyping has produced some statistical anomalies. Citing a study of the United States Public Health Service, Cole noted that African Americans were found to use illegal drugs in the same proportion as their representation in the population at large. African Americans were 13 percent of the general population and 14% of the illegal drug users. However, the proportionality ceased with examination of arrest and conviction statistics. African Americans were 35 percent of those arrested for drug possession, 55 percent of those convicted for drug possession, and 74 percent of those sentenced to serve time for drug possession. However, Cole further explained that even if statistical studies demonstrated a higher likelihood that African Americans were more likely to engage in crime than other racial groups, police officers could not lawfully rely on this information. Summarizing Equal Protection analysis, Cole explained that the use of such racial generalizations has such a pernicious history that law enforcement officials could not defend the rational use of race. Rather before they could use race in such a generalized fashion they would have to demonstrate that their use of race was justified by a compelling state interest. Cole reasoned that it is clearly not necessary for police to generalize based on race. Further where such generalizing has occurred it represented “bad policing.” Reiterating this point Cole stated: “When you are stopping a lot of innocent people because you are relying on race, you are going to let a lot of guilty people who don’t fit the profile go by.”

In response to the legal, administrative, social, and equitable issues raised by racial profiling, Cole offered three recommendations. First, he recommended that police officials should send a clear message to the rank and file that racial profiling is wrong. Second, Cole concluded that it is absolutely critical that law enforcement agencies collect data. Data collection sends the officer a message that racial profiling is wrong whenever the officer engages in a stop and with adequate data law enforcement officials can assess the magnitude and the extent of racial profiling. Data collection may address the widespread perception that racial profiling occurs enhancing the legitimacy and integrity of police institutions among minority communities; its collection permits monitoring of

police officer performances. Finally, Cole noted that accountability mechanisms are essential for addressing racial profiling. In particular, mechanisms must exist to detect whether the officers are accurately reporting the required data, and whether citizen complaints are legitimate.

Cole stressed that a number of jurisdictions have responded to the issue of racial profiling by undertaking “various forms of reporting initiatives.” North Carolina and Connecticut have passed laws that require data collection. A Presidential Executive Order mandates that federal law enforcement agencies collect data. A Gubernatorial Executive Order has required the collection of data in Florida. In California forty-five law enforcement agencies are voluntarily collecting data. Further, the cities of Houston, Texas, Tallahassee, Florida, and Dearborn, Michigan voluntarily collect data.⁵³ Other jurisdictions are required to collect data under consent decrees: (1) New Jersey; (2) State of Maryland and Montgomery County Maryland; (3) Pittsburgh and Philadelphia, Pennsylvania; and (4) Steubenville, Ohio.⁵⁴

Anticipating concerns raised about data collection, Cole reported that it was not a time consuming process. Citing to the experiences of the City of San Diego, he informed the Task Force that entering racial data adds only twenty to thirty seconds to the time spent by the officer when completing report forms. The City of San Jose found that it only took a few seconds extra for officers to record information such as the race, sex and age of the person stopped along with the reasons for the stop or search if one is conducted. Cole also addressed the frequently raised concern that officers may not be able to determine whether an individual is black, Latino, or white. He noted that further concerns have been raised by law enforcement that solicitation of this information might escalate encounters with persons who are stopped. Cole indicated that recording the perception of the officer rather than the actual ethnic identity of the individual addresses that concern.⁵⁵

⁵³ Exhibit 11.

⁵⁴ Exhibit 11.

⁵⁵ Exhibit 11, p. 62.

D. PROFESSOR DAVID SCHULTZ, an expert on 4th Amendment issues⁵⁶

Professor Schultz focused exclusively on the implications of racial profiling under the Fourth Amendment. Building on the discussions offered by Professor Cole he noted that many contacts between police and citizens are outside Fourth Amendment protections which basically extend to only searches and or seizures. Again, focusing on the Fourth Amendment, Schultz reiterated that where there is no scrutiny under the Fourth Amendment, there is “no call on police officers to give reasons or evidentiary justification for what they’re doing.” Professor Schultz used various United States Supreme Court decisions that addressed Fourth Amendment challenges. As illustrations of this point, Professor Schultz referenced police stops of citizens for questioning where persons are free to leave; and police stops of citizens in situations where freedom of movement is limited such as on a bus or at work. He reasoned that in these instances, police officials have virtually blanket authority. Commenting on the law in Wisconsin, Schultz noted that Wisconsin basically tracks the decisions of the United States Supreme Court, offering its residents no greater protections than those recognized by the Supreme Court.

E. BOB STEWART, an expert in police management and policy issues⁵⁷

Bob Stewart, is the Executive Director of the National Organization of Black Law Enforcement Executives (NOBLE). He provided the Task Force with NOBLE’s resolution on racial profiling and outlined methods they recommend to combat the problem.

After describing his experiences with the subject of racial profiling, Mr. Stewart informed the Task Force that at their conference in Portland, Oregon, NOBLE passed a resolution to support data collection by police agencies. He identified two types of circumstances that involve police encounters that were pertinent to the discussion of racial profiling, traffic stops and criminal investigation stops. After close examination of

⁵⁶ David Schultz, Professor, University of Wisconsin Law School, Instructor, Madison Police Department, 1979-1994 responsible for designing the course of instruction for City of Madison police recruits, Reporter for the Wisconsin Jury Instruction, Criminal Law from 1976 to the Present. Exhibit 11.

⁵⁷ Bob Stewart was a member of the District of Columbia Police Force for twenty-two years. He retired with the rank of Captain from the District of Columbia Police Force. Mr. Stewart addressed the topic, “Building Accountability Into Police Operations: Data Gathering, Documenting Stops & Systems for Management.” Exhibit 12.

the nature of these encounters, Stewart explained NOBLE's position on data collection during these police encounters. Data collection for purposes of racial profiling is simply an aspect of the type of management information that should be gathered about law enforcement activities so that management has adequate information to accurately assess work performance.⁵⁸

Mr. Stewart described several methods departments used to document law enforcement performance: (1) Video monitoring has become very popular and has been used to document correct performances by law enforcement personnel; (2) Open complaint systems can encourage the collection and report of public concerns and deter officers from engaging in racial profiling; (3) Mechanisms such as brochures, flyers, advertising of complaint systems, along with officer business cards can be used to ensure that the public has an opportunity to communicate with law enforcement officials; (4) Early warning systems involve identification of criteria that indicate officers are having problems and then involving various levels of supervision in the process of addressing the problem.

F. CHIEF BILL LANDSDOWNE AND CAPTAIN ROB DAVIS, San Jose, California, A Law enforcement agency with a localized data collection system⁵⁹

The Task Force invited officials of the City of San Jose Police Department to present at its March meeting after learning that San Jose was the first law enforcement agency in California to voluntarily collect and study data on racial profiling. Chief Bill Landsdowne and Captain Rob Davis addressed the topic, "Traffic Stops and Data Collection: Analyzing & Using Data – San Jose Experience."

During their presentation, they discussed their methodology for collection of data, explained to the Task Force the results obtained after analyzing their data, and outlined their future plans for enhancing their management information systems and reports. They also shared two written reports describing the results of the San Jose study and the

⁵⁸ NOBLE's Resolution is contained in the submission of the Wisconsin Chapter of NOBLE which was provided to the Task Force at its October 2000 meeting and is contained in Appendix 6 of this report.

⁵⁹ Chief Bill Landsdowne, Chief of Police of the City of San Jose, California, from 1998 to the present and former Chief of Police of the City of Richmond, California, and Rob Davis, Captain San Jose Police Department and member of Police Department for 19 years, addressed the Task Force at the March 2000 meeting. Exhibit 12.

demographics of the area.⁶⁰ In the San Jose Report the Department acknowledged that their agency had not been immune to suggestions from its citizens that officers in their Department practice racial profiling. While citizen accounts were mostly anecdotal, the San Jose Department emphasizing its policy of responsiveness to public concerns moved forward with examining the issue of racial profiling to determine if there were any indications that it occurred in San Jose. Their preliminary activities included examining the Department's policies, procedures, and training methodologies to ensure that racial profiling did not occur at any level of police operations. Before attempting to collect racial data they also consulted with various communities, police unions, and law enforcement officials.

Data collection was implemented in three stages. Stage One involved vehicle stops and required the collection of age, gender, race, reasons for the stop data, along with information documenting the outcome of the encounter—whether a citation was issued, arrest made, etc. Stage Two will involve vehicle searches and will be implemented next year. Stage Two will involve the collection of age, gender, race, and reason for the search information and whether any evidence of crime was discovered. Stage Three will involve pedestrian stops and require the collection of age, gender, race, and reason for the stop data along with information about whether any evidence of a crime was discovered.

On June 1, 1999, the San Jose Police Department began its Vehicle Stop Demographic Study (VSDS), collecting data on the race/ethnicity, gender, and age of each driver stopped, as well as the reason for the stop and the ultimate enforcement action taken by the officer. The Department used its Computer Aided Dispatch (CAD) system to collect the data for the Study. For example, upon the completion of a vehicle stop, officers used alpha codes to reflect the information collected. The officer then either verbally advised the police radio dispatcher of the applicable codes, or transmitted the traffic stop data to the police radio dispatcher by entering the information on the mobile computer terminal located in each one of San Jose Police Department's patrol vehicles.

⁶⁰ In their first report of December 1999, the San Jose Police Department noted that "racial profiling occurs when a police officer initiates a vehicle traffic stop based primarily upon the race of the driver in the motorist's vehicle." See, Exhibit 12.

Using six months of data, the Department analyzed this information segmenting the results according to police districts within the City of San Jose. Department officials noted that they did not have census information by racial category for each district. So they developed their own demographic statistics for purposes of comparison after consulting with community members in the district. They also considered the ethnic identities of the victims as well as those of the suspects in those crimes. Those percentages correlated with other racial data gathered regarding the characteristics of the district. While an analysis of the data suggested that San Jose did not have a problem with racial profiling, Captain Davis stressed that this analysis did not address whether a particular officer or officers might have a problem with racial profiling. He noted that the Department benefited from the study whether or not the data disclosed a racial profiling problem because the study addressed the perceptions and concerns of members of the community.

G. PROFESSOR DAVID HARRIS, a legal scholar and author on racial profiling⁶¹

Professor Harris defined racial profiling and discussed the value of anecdotal evidence, the importance of data collection, and the consequences of racial profiling on the community and on law enforcement. He began his discussion by offering a broad definition of racial profiling. Professor Harris described racial profiling as what happens when traffic enforcement is used as a pretext or excuse to stop, question, and search African-American, Latino, and Asian American drivers in numbers that are disproportionate to their numbers on the road.

Acknowledging the limitations of definitions to express the impact of racial profiling, Professor Harris offered a couple of accounts from individuals who experienced racial profiling. Their stories offered compelling accounts of the emotional devastation associated with racial profiling; humiliation, emotional pain and anger, to name a few of the consequences.

⁶¹ David A. Harris, Balk Professor of Law and Values, University of Toledo College of Law and Senior Justice Fellow, Center for Crime, Communities & Culture in New York. He is a graduate of Yale Law School and has an advanced degree from Georgetown Law Center. Professor Harris is the author of “The Stories, The Statistics, and The Law; Why ‘Driving While Black’ Matters,” (Minn. Law Rev.). The title of Professor Harris’ presentation at the March 2000 meeting of the Task Force was “Racial Profiling: What It Is, Why It’s Important, and Why Law Enforcement Should Care.” Exhibit 12.

To confront arguments that disproportionate numbers of African Americans and Latinos in prison justify racial discrimination against these groups, Professor Harris argued that the disparities could just as well be the result of the disproportionate focus by law enforcement officials on these groups. Using statistics comparing drug arrests against drug use, Professor Harris established that law enforcement activity, decision, and policy create disparities between minority and white arrest records. Consistent with the opinions of other experts, Professor Harris noted that with racial profiling, lots of whites get a “free pass.” He stated that this is not good law enforcement, it’s not even-handed law enforcement; it’s not law enforcement that comports with the facts.

Professor Harris concluded that individuals subjected to racial profiling experience “corrosive cynicism.” This cynicism extends not only to law enforcement but also to the entire justice system, and without trust, community-policing fails. Law enforcement officers cannot partner with members of the community to solve crimes and further, the cynicism migrates beyond the affected communities to the general population whose members begin to share perceptions that every element of the justice system is administered unfairly. Harris emphasized that “even if you disagree, [that racial profiling occurs] the perception is out there, the corrosion is out there, the rot is setting in, and all of us, especially law enforcement, have a great stake in coming to grips with that.”

Concerning data collection, Professor Harris agreed with others that it is a good starting point. While data collection does not solve the problem it does provide the information needed to take the necessary steps. Agreeing in part with Professor Cole, Harris reasoned that the problem of racial profiling might be “larger or smaller” depending on the particular area. However, a jurisdiction will not know unless it begins to measure. Summing up the thrust of his views on data collection, Professor Harris stated, “You cannot manage what you don’t measure.”

Professor Harris connected collection of racial profiling data to policy reforms that change incentive structures. Describing incentive structures as responses by individuals to rewards and punishments, Professor Harris concluded that policy reforms could indeed change behaviors. Offering as an example, changes in police policies that reward “hits,” successful investigations versus mere “stops,” Harris illustrated how police policies could either encourage or discourage racial profiling.

Harris recommended that every law enforcement agency in a state should be required to develop a written policy against racial profiling. The policies should broadly define racial profiling to include more than just behaviors based solely on race. Further, policies should include provisions for training, treating motorists with courtesy and respect, and requiring that officers inform individuals why they were stopped. Once policies are developed, they should be publicly announced and disseminated so that the public knows the position of police agencies on this issue.

H. A. J. (NINO)AMATO, Former Chairman, Madison, Wisconsin Task Force on Race Relations⁶²

Mr. Amato offered the Task Force the benefit of the insights he gained while serving as Chair of the Mayor's Task Force on Race Relations for the City of Madison. After a number of extended consultations with community groups and members of the public, The Mayor's Task Force offered a number of recommendations for changes in police policy that are relevant to the issue of racial profiling. They include:

1. Revision of brochures to create a more "user friendly" complaint process;
2. Providing law enforcement officers with business cards;
3. Community forums to educate the public on police procedures during traffic stops;
4. Designating an Officer in Charge as the recipient of complaints from the public;
5. Piloting the use of police car video camera equipment;
6. Conduct a series of focus groups with objectives for improving police communications;
7. Reevaluate and implement annual in-service training for police personnel on diversity and cultural sensitivity;
8. Develop the capacity to record, store, analyze and report traffic stop data.

⁶² A. J. (Nino) Amato, is the Vice President of Business and Regional Development, Chief Marketing Officer Meriter Hospital, Madison, Wisconsin and was the Chair of the Mayor's Task Force on Race Relations for the City of Madison, Wisconsin. Exhibit 12.

I. STEVEN H. ROSENBAUM, Chief, Special Litigation Section, Civil Rights Division, United States Department of Justice⁶³

1. April Task Force Address

Steven Rosenbaum is the chief federal civil prosecutor of police agencies for unlawful conduct. Mr. Rosenbaum addressed the Task Force on two occasions. His initial presentation focused on the federal response to racial profiling, and on the use of data collection as a useful tool to combat the practice. The second presentation revisited the same topics, and also included a discussion of the specific concerns of Wisconsin law enforcement.

Mr. Rosenbaum noted Attorney General Janet Reno's initiative to bring police administrations and communities together. He also addressed the use of excessive force and the issue of traffic stops. Quoting Attorney General Reno, Mr. Rosenbaum acknowledged that police officers have "hard jobs", but emphasized that officers need the trust and confidence of the communities they serve if they are to successfully perform their very important responsibilities. Rosenbaum said some have questioned whether our success in reducing crime has been due in part to overly aggressive police officers that ignore the civil liberties of Americans. That question, he explained, essentially articulated a central challenge in creating police departments, which are both effective and respectful of citizen's rights.

In discussing the various statutes enforced by the Justice Department's Special Litigation Section, Rosenbaum noted the particular importance of the 1994 Violent Crime Control and Law Enforcement Act. This Act plays a pivotal role in the Justice

⁶³ Steven H. Rosenbaum, is the Chief, Special Litigation Section in the Civil Rights Division, United States Department of Justice. Since 1995, Mr. Rosenbaum has served as the Co-Chairperson of the Division's Police Misconduct Initiative, and since 1996, he has served as Chief of the Division's Special Litigation Section. During the January meeting the Task Force was advised of Mr. Rosenbaum's prosecutorial responsibilities. They include "enforcement of the Violent Crime Control and Law Enforcement Act of 1994 which authorizes the Attorney General of the United States Department of Justice to file lawsuits seeking court orders to reform police departments engaging in a pattern and practice of violating citizens' [constitutional] rights." Also, he is responsible for enforcing the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964 as they relate to law enforcement services. Together these Acts prohibit police departments receiving federal funds from engaging in discrimination on the basis of race, color, sex, religion or national origin. With respect to his experience, the Task Force was advised that Mr. Rosenbaum's Division has been involved with addressing police misconduct problems in several jurisdictions: the states of Maryland, New Jersey, Ohio, and Pennsylvania. The nature of the problems addressed have included complaints of excessive force,

Department's efforts to address police misconduct. Prior to passage of this legislation, the Justice Department only had authority to address individual incidents of police misconduct by bringing criminal prosecutions against individual officers for engaging in egregious civil rights violations. One notable example of the exercise of that authority occurred in the cases of the officers who beat Rodney King. In addition, victims of police misconduct can bring civil lawsuits to obtain monetary damages. However, neither of these approaches provided the Justice Department with authority to address deficiencies in police agencies' management practices.

By contrast, the 1994 Violent Crime Control and Law Enforcement Act authorized the Justice Department to bring actions against state, city, and local law enforcement agencies, if they engaged in a pattern or practice of conduct that violated the federal constitutional or federal statutory rights of individuals.

Through remedial measures that permit actions for declaratory and injunctive relief, the Justice Department can now target management practices of law enforcement agencies. Rosenbaum offered examples of the types of law enforcement management practices now subject to Justice Department scrutiny: training, day-to-day supervision, management oversight of trends for individual officers, or units within departments, misconduct complaint procedures, disciplinary procedures and outcomes of the disciplinary process.

Rosenbaum noted that where the issue is excessive force, the Justice Department is empowered to examine the management practices of law enforcement agencies in order to determine whether the agency had clear policies regarding use of force, including police training in tactics of verbal persuasion. The Justice Department also considers the extent to which the subject agency monitors its use of force, the methods the agency utilizes to monitor the use of force, and the way in which the agency uses any information obtained thereby. The Justice Department considers whether and to what extent the law enforcement agency investigates complaints of misconduct in an environment that leaves the public free from fears of reprisal. Rosenbaum also stressed that the Justice Department would consider the extent law enforcement personnel in the

improper searches, false arrests, discriminatory harassment, discriminatory stops, searches, or arrests, and retaliation against persons alleging misconduct.

chain of command were accountable for undertaking proactive steps to prevent excessive use of force. Collection and analysis of data can therefore be of great importance to police managers.

Rosenbaum acknowledged that traffic stops were a legitimate law enforcement tool. He emphasized that racial discrimination is wrong, legally and morally, even when applied in this highly discretionary context. Explaining that anyone who drives a car is subject to a stop by a police officer, Rosenbaum discussed the importance of structuring the officers' discretion. Even ordinary traffic stops create anxiety, result in loss of time, and represent a show of authority that can produce confrontations that may lead to serious consequences. As with excessive force, police managers can investigate and assess the issues raised by traffic stops through data collection and analysis.

Where data collection was mandated as a result of litigation activity, the data collected was relatively extensive. Citing the New Jersey experience, for example, Rosenbaum remarked that the information collected included such things as the reasons for the stop and post stop activity. Whatever data are gathered, Rosenbaum found that careful analysis of the data is very important. Using data tracked by video cameras as an example, Rosenbaum noted that the videos could be examined on a random basis by supervisory staff, or supervisors could undertake special reviews of videos for particular officers where potential problems were identified. Further, Rosenbaum explained that any data collected could be analyzed against two types of benchmarks: external and internal benchmarks. External benchmarks are based on studies that establish, for example, the percentage of minority drivers on the highways who commit certain driving infractions, compared to other segments of the total population. Internal benchmarks, on the other hand, could involve analysis of data collected on similarly situated police officers, shifts, or other sub-units within police departments.

Further, law enforcement management would have to monitor data collection to maintain the integrity of the process. To underscore this point, Rosenbaum pointed out that two officers in New Jersey are currently being prosecuted in state court for allegedly placing false information on data collection forms. Rosenbaum noted that this problem could be addressed through supervisory monitoring—comparing video results with paper records; requiring supervisors to be on the road more and observe officer behavior; and

performing follow-up contacts with persons who are stopped. Rosenbaum suggested that review of the settlement agreements obtained in litigated cases of police misconduct would provide further information on the various uses of the data collected.

2. May Task Force Address

Mr. Rosenbaum's second presentation, made at the request of the Task Force, focused on the concerns expressed by Wisconsin Law Enforcement agencies and specifically addressed particular concerns raised at the May 2000 Task Force meeting.⁶⁴ Task Force members thought it was particularly important that police agencies, specifically invited to this session, have the opportunity to hear Mr. Rosenbaum's presentation. Further, Task Force members agreed that it would be very useful if police agencies were provided an opportunity to question Mr. Rosenbaum. At the May meeting, Mr. Rosenbaum addressed the same issues he discussed at the April 2000 meeting. However, several points were given additional emphasis. Further, Mr. Rosenbaum offered detailed recommendations.

Rosenbaum noted that since 1994, his department has investigated twenty-one law enforcement agencies. Three cases were closed with no further action. Of the four cases filed in court, three were resolved by consent decree. Fourteen cases are pending. In response to a specific inquiry regarding a Department of Justice investigation in Wisconsin, Rosenbaum stated: "I will assure Superintendent Schumacher. We do not have a pattern or practice [case] under investigation in Wisconsin at this time." Rosenbaum discussed a variety of subjects, including complaint activity against police departments, police management tracking systems, the Justice Department's settlement agreement with the state of New Jersey, and traffic data collection by other jurisdictions.

Officer tracking systems make it possible to identify trends over a period of time for individual officers, specific shifts, and sub-units in a police department. The information can be assembled and provided to command staff to allow analysis for training and policy development. Rosenbaum stressed that this information could also be used for non-disciplinary interventions and outcomes. In addition tracking systems also provide information that enables police to recognize officers who deserve commendations. Rosenbaum summarized his position on data collection by stating,

⁶⁴ Exhibit 14.

“more data used carefully is better than a little data not used at all.” As an example, Rosenbaum offered greater details about the New Jersey settlement, recognizing that among the 17,000 law enforcement agencies throughout the country there are significant differences in size and functions. However, the New Jersey settlement agreement established parameters that the Justice Department considers when investigating law enforcement agency misconduct: post-stop enforcement activities, traffic stop documentation, supervision, training, complaint procedures, public accountability, and the extent and reliability of monitoring which occurs. Under the New Jersey agreement: state troopers must document all traffic stops by race, ethnic origin, age, and gender; video cameras must be placed in all trooper cars that patrol limited access highways; data and information on misconduct allegations will be used to identify patterns of problem behavior so that non-disciplinary corrective measures may be taken. Further, New Jersey was required to implement a procedure to make complaint systems more accessible to the public, and to assure that misconduct allegations are fully and fairly investigated and that discipline is imposed where necessary and appropriate. Every six months the state police must issue a report on its activities that will include traffic stop statistics by race and information on complaint investigations.

Rosenbaum noted other jurisdictions are also collecting data for purposes of monitoring for racial profiling. Among state law enforcement agencies, Connecticut and North Carolina are collecting data pursuant to state laws. State law enforcement agencies in Florida, California and Michigan are voluntarily collecting data. Further, Rosenbaum noted that “many municipalities have decided to start doing data collection all across the country.” He explained that some jurisdictions have collected data voluntarily in anticipation of legislative considerations of a statutory mandate. Others have voluntarily collected data for reasons independent of any legislative action. Rosenbaum concluded that good policing could bring down crime rates as well as perceptions of civil rights violations, particularly in communities of color. Data analysis will enable law enforcement agencies to better function, not just on civil rights issues, but on the basic management issues that require the wise use of limited resources.

J. DR. JOHN LAMBERTH, an expert in quantitative methodology on data collection⁶⁵

Dr. Lamberth is an expert in the quantitative methodology of data collection. He addressed the methods he uses when conducting research for litigation. He designed and implemented the statistical studies used in two important racial profiling cases, *Soto* and *Wilkins*.⁶⁶ Dr. Lamberth was invited to meet with a sub-committee of Task Force members and discuss his research on racial profiling. Task Force members were impressed with Dr. Lamberth's litigation experience in this area.

Dr. Lamberth explained that benchmarks are a key concept in undertaking research to determine the existence of racial profiling. Recognizing that benchmarks are often misunderstood, Dr. Lamberth described benchmarks as "the minority percentage of those stopped, searched, and arrested by law enforcement...", but he went on to point out that these benchmarks "only take on significance when [they] can be meaningfully compared to the percentage of that group who are eligible to be stopped."⁶⁷ He further explained that "there are no Census Bureau figures to determine how many of the people traveling on the highway over a given period of time are African Americans or how many of them are violating traffic laws."

Dr. Lamberth explained that the "first step in establishing a benchmark is to determine the particular minority population of the roadway."⁶⁸ "In New Jersey observers were placed by the side of the road and assigned to count the number of cars and the race of the occupants in every car that passed them."⁶⁹ However, Lamberth noted that there were other methods to determine the relevant minority populations such as surveys that

⁶⁵Dr. John Lamberth, Professor Psychology Department, Temple University (Former Chairman of the Department of Psychology and Past Director of the Division of Social Psychology), Philadelphia, Pennsylvania, met with the Chair Judge White, Attorney Bias, Superintendent Schumacher and Professor Williams of the Governor's Task Force on Racial Profiling in March 2000 to provide direction to the Task Force on data analysis methodology in racial profile cases. Dr. Lamberth has been qualified as an expert in cases involving racial profiling.

⁶⁶ William H. Buckman & John Lamberth, "Challenging Racial Profiles: Attacking Jim Crow on the Interstate," THE CHAMPION Sept./Oct. 1999 (*Soto* and *Wilkins* involved racial profiling challenges in the states of New Jersey and Maryland, respectively.)

⁶⁷ Buckman and Lamberth.

⁶⁸ Id.

⁶⁹ Id.

assess the number and racial identity of motorists violating traffic laws, so called “violation surveys.”⁷⁰

Using the *Soto* case as an illustration, Lamberth explained that the *Soto* team found that approximately 15 percent of the cars violating traffic laws had a black occupant. This percentage did not vary greatly from the finding that 13.5 percent of motorists on the highway were Black. However, when compared to the percentage of motorists stopped by law enforcement, the percentages varied greatly, such that 35% to 46% of the motorists stopped by law enforcement officers were Black. After performing standard statistical tests, Lamberth concluded that the odds that these results could occur by chance were less than one in a billion. Phrasing the results of the statistical analysis another way, “black motorists at one part of the New Jersey turnpike were 4.85 times as likely to be stopped as motorists who [were] not black.”⁷¹ Further, comparisons of citations issued through various interdiction methods revealed that “[a]s trooper discretion increased, black tickets increased dramatically.”⁷²

⁷⁰ Buckman and Lamberth, “Challenging Racial Profiles: Attacking Jim Crow on the Interstate,” THE CHAMPION Sept./Oct. 1999.

⁷¹ Id.

⁷² Id.

*As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.*⁷³

Law Enforcement Code of Ethics

CHAPTER III

Governor's Task Force on Racial Profiling Outreach to Wisconsin Law Enforcement

A. INTRODUCTION

One mission of the Task Force was to determine and examine public perception on the issue of racial profiling during traffic stops. The Task Force believed that it was important to hear from the law enforcement community as well as the public at large, to fully understand perceptions of the issue from both sides.

The law enforcement community within Wisconsin has developed a proactive approach to communicating its concerns on racial profiling during traffic stops, to the Governor's Task Force. Starting out cautiously in their attention and approach, the chief executives and representatives of the "rank and file" of law enforcement eventually gained confidence in dialogue with the members of the Task Force and with members of their own agencies and associations. Initially wary of being labeled as "racist" or ignorant of the issue, law enforcement executives and officers that did speak up were often defensive of their overall tasks, their agencies, and their practices. Like other agencies nation-wide, the Wisconsin law enforcement community did not want to be accused of something they did not feel they were practicing, promoting, or condoning. Comments first publicly heard at the May 2000 Task Force meeting in Stevens Point, Wisconsin echoed concerns raised by all law enforcement agencies that they were being unjustly accused, being forced to accept data collection as the panacea to the perceived

⁷³ Opening words of the *Law Enforcement Code of Ethics*.

problem of racial profiling, and were going to need to spend an unacceptable amount of time and money to correct a problem they were not sure existed.

Professor David Harris, of the University of Toledo, identifies the feelings of many law enforcement agencies, nationwide, that he has worked with over the last six years as “rational discrimination”. He explains that law enforcement initially denies profiling by saying, “It doesn’t happen. It doesn’t happen here. Tell me one officer in my department that does it, I’ll take action immediately. But it’s not happening. This is nothing but a bunch of stories, a bunch of anecdotes connected into the latest flavor of the month.” Then, after education and dialogue, the law enforcement community was saying it “wasn’t racially biased enforcement, it was simply the unfortunate byproduct of sound police policy”, or “rational discrimination.” The conflicts among the needs to enforce laws, keep streets and roadways safe, and ensure the safety of officers, while also protecting the rights of every citizen, is a real issue, and one that is not easily solved. The importance of each of those factors of safety and the rights of all citizens, is what has lead the law enforcement community to work through its initial denials and objections, and get to the point of accepting the responsibility of finding solutions to a problem. Though the dialogue continues on what the extent of profiling among Wisconsin law enforcement agencies really is and where does good policing conflict with profiling, the entire issue is beginning to see some cooperative and positive results. The dialogue among the law enforcement community, the communities they serve, and the members of the Task Force, has resulted in a learning experience for each party involved and an appreciation for the complexities of policing that make profiling a difficult problem to grasp and effectively correct.

Although law enforcement is represented on the Task Force at the local, county and state levels, the perspective of a number of officers was needed to make attainable recommendations at the completion of the process. Law enforcement presented information at three meetings and two public forums. The Task Force specifically invited all of Wisconsin law enforcement to “stand and deliver” on this issue of racial profiling to ensure that their voice would be heard.

*I can say to you without equivocation that no [police supervisor] is going to knowingly allow his or her officers to use race as a basis for stopping people. However, that does not mean that profiling is not occurring on an individual basis by some errant officers. Nevertheless, it is not allowed, it is not supported and it is not condoned.*⁷⁴

Law Enforcement comment at
Task Force forum

B. TASK FORCE STATEWIDE FORUM TO ADDRESS LAW ENFORCEMENT CONCERNS⁷⁵

The Task Force members held a public forum on May 23, 2000, to solicit information from the Wisconsin law enforcement community. The Task Force believed they needed to give law enforcement officials the chance to address this matter by telling the Task Force members what they believed to be the state of the problem and offering any advice on possible solutions or recommendations to address this matter in Wisconsin. Soliciting information from this group was a key component of meeting the first three requirements of the task force mission and to assist them in the fourth task, to explore solutions and make recommendations.

The Task Force held this public forum at the University of Wisconsin at Stevens Point and invited members of the law enforcement community to first, listen to Attorney Steven H. Rosenbaum of the United States Department of Justice, Civil Rights Division, Special Litigation Section, speak about what his office looks for when investigating a pattern or practice case and second, to inform the Task Force members of their individual or agency views on the subject of racial profiling. The Task Force sent out letters to law enforcement agencies and organizations across the state and included an extra copy with a request that the letter copy be given to the union representatives in the agency and that the original letter be distributed to the officers of the agency. This letter was also sent to various law enforcement unions across the state. The University of Wisconsin at Stevens Point graciously sent out press releases to the newspapers across the state informing the

⁷⁴ Exhibit 7 (Comments taken from a letter from a law enforcement official submitted to the Task Force at its May 2000 public forum).

⁷⁵ Exhibit 14, Transcript of May 23, 2000 meeting.

public of the forum. More than six hundred (600) letters were sent out containing two copies of the agenda for the forum, a list of Task Force members, the mission of the Task Force, the schedule for the rest of Task Force meetings, a form to register to speak, a form to send in or hand in written comments on the topic, and directions to the event.

Fifteen people from across the state took the opportunity to address the Task Force either in person or in writing. They were:

1. Chief Deputy Thomas Sweet, Racine County Sheriff's Office
2. Chief Charles McGee, Watertown Police Department/Police Executive Group
3. Chief Richard Myers, Appleton Police Department
4. Mr. Rick Church, Director of the Stockridge-Munsee Public Safety Department
5. Colonel Douglas L. Van Buren, Wisconsin State Patrol Deputy Superintendent
6. Lieutenant Brian Willison, Dane County Sheriff's Office
7. Chief Delbrandt, Antigo Police Department/Northern Chiefs of Police Association
8. Chief Mike Vopesa, Athens Police Department
9. Lieutenant Kevin Ronbank, Menomonee Falls Police Department
10. Mr. Casey Perry, Wisconsin Troopers' Association
11. Commander Tom Gale, Rock County Sheriff's Department
12. Assistant Chief Daniel Doslov, Brookfield Police Department
13. Chief Jim Seik, Eagle River Police Department
14. Mr. Chris Amuty, American Civil Liberties Union
15. Mr. Andrew Gokee, Red Cliff Band of Lake Superior

Chief Myers of the Appleton, Wisconsin, Police Department addressed the Task Force beginning his comments with the belief that racial profiling is a national issue and therefor is an issue for Wisconsin. Racism, individual or institutional, is a problem. To combat profiling, his agency has developed an intercultural department coordinator. With this position the Appleton Police Department holds community forums in the Hmong and African American communities, conducts internal diversity training within the agency itself and at the Basic Law Enforcement Training Program at Fox Valley Technical College, addresses any issues involving race and diversity that arise in the community, and screens for racism when hiring. Chief Myers believes data collection has become the issue instead of an approach. Existing data collection systems in effect in Wisconsin are inadequate, leaving unanswered the questions of how and what to collect, and what the collected data will be used for. He believes that law enforcement should analyze the data they already have. There are five things that Chief Myers believes will help solve the problem. They are: (1) train officers; (2) ongoing in-service training on ethics and

morality; (3) use the money for data collection to buy video cameras for police cars; (4) have handouts for motorists describing the standard traffic stop protocol; and (5) develop best practices.

Mr. Andrew Gokee, of the Red Cliff Band of Native Americans of Superior, spoke to the Members as well. He is not a member of law enforcement, but wanted to take the opportunity to express his concerns about racial profiling. He talked about the number of inmates in the county jail that are from his tribe; they are the majority inmate population even though they are less than ten percent of the town's population. He stated that this is a problem and that the Native American community does believe that racial profiling exists. However, you will not hear any complaints about it, he added. It is not in the Native American culture to complain, it does not mean they are complacent, it just is not in their nature to complain. He closed with the idea that maybe racial profiling is just a perception, but it is his community's perception, which makes it a reality. Data collection might be able to clarify this difficult situation.

Racine County Sheriff Office Chief Deputy Tom Sweet also addressed the Task Force and began his comments with a question of what is racial profiling, how is it defined? He likes to say discrimination instead of profiling, but defines it as stopping based on one race or another. If it is defined as discrimination in policing traffic stops, then when it is appropriate or not can be differentiated. To use race to identify a suspect is an acceptable police practice; however, stopping someone for safety reasons based on race alone is not acceptable. There is almost always a reason to stop a vehicle; the problem comes in when the officer is basing whom to stop on the motorist's race. Chief Deputy Sweet stated that he strongly believes that discrimination, or racial profiling, is wrong, but he does not believe there is a problem in Wisconsin and absolutely does not believe that statewide mandatory data collection is appropriate.⁷⁶

Chief Charles McGee representing the Police Executive Group (PEG) spoke to the Task Force as well. PEG consists of forty state and municipal agencies and has over 5,000 sworn employees as members. Chief McGee echoed the sentiments of Attorney Rosenbaum in that the state should look at and use the information it already has. He stated that first line supervisors and some sheriffs must be involved with the legislative

⁷⁶ Exhibit 14, pp. 96-97.

committees. If the people who train the officers are not committed and don't understand the history and reasons behind the training, they will not be able to explain to their officers why they are being asked to do things. That idea also applies to police chiefs; they have to understand and help make this work. Chief McGee also spoke to the provision in the vetoed legislation that would require officers to gather information from passengers in a stopped vehicle. He said this was asking to make the situation antagonistic because during a traffic stop, the officer's initial business is with the driver. An officer is most vulnerable when standing at a vehicle for a traffic stop, if the officer starts asking several questions of a passenger, the situation can become tense because of perceived distrust by the officer of the uninvolved passenger.⁷⁷

Lieutenant Brian Willison of the Dane County Sheriff's Office (as of July 2000 Lieutenant Willison was promoted to Captain in the Sheriff's Office) spoke to the Task Force Members that afternoon. He agreed with Chief Myers' comments that an emphasis on training law enforcement and education of the public is probably the real key to addressing this problem. Lieutenant Willison said that we all agree that race-based stops, dealing with people differently based on their race, national origin, ethnic background, or any of those factors is improper. There is a difference between police misconduct where the police purposefully single out a certain segment of society whether it's based on race or origin and a police officer inadvertently offending the public. However, the perception can be the same. That is why part of the key is training law enforcement. Lieutenant Willison stated that the training of law enforcement and education of the public on what law enforcement does is very important. The focus should be on better training of law enforcement, the better we are trained the better we police. In response to a question about state data collection Lieutenant Willison said the law enforcement basic training courses try to make uniform training, one size fits all, but just like our community is very diverse, Wisconsin is a very diverse state. If data collection were implemented by a state agency, it would be set up the way one area, such as Milwaukee County, would need it to function. However, that system may not work for every area because the state is so demographically different. Effective policing is a local effort and in order for law

⁷⁷ Exhibit 14, pp. 88-96.

enforcement to work with their communities they have to be responsive to the people in their communities.

One of the other speakers at the Stevens Point Forum was Mr. Casey Perry, Executive Director of the Wisconsin Troopers Association (WTA). He discussed the need for data collection. Mr. Perry is of the opinion that initially agencies are reluctant to do the data collection because they believe it is too much of a disturbance and that it will just create more citizen complaints. However, after speaking with New Jersey State Troopers who have been collecting data for a while under a federal consent decree, Mr. Perry indicated that within the New Jersey State Police, things are improving and the trust from the community is returning. Mr. Perry then further spoke of the importance of community trust and how fragile it is. The Executive Board of the Wisconsin Troopers Association voted in support of the voluntary collection of data.⁷⁸ Finally, Mr. Perry spoke of how data collection could help the state beyond determining if racial profiling is occurring assuming that highway safety factors could be tracked and problems in specific areas could be identified and then solved. For example, specific areas of speeding could be traced by this data collection, along with specific age groups. This information would allow law enforcement to correctly target the right areas and people for education on the dangers of speeding.⁷⁹

Collectively, all of the speakers gave considerate and valuable testimony to the Task Force regarding the issue of racial profiling. Some common themes to come out of the meeting were: (1) the need to define the term “racial profiling”; (2) a question of whether or not there was a real problem of racial profiling statewide; (3) how data collection could and would impact individual agencies from the small agencies to the large metropolitan cities; and (4) what would data collection do for the issue of racial profiling and law enforcement agencies after it was analyzed.

During the May forum it was brought to the Task Force’s attention that local law enforcement wanted a chance to further discuss the issue with the law enforcement members of the task force. In response to that request, the Task Force Chair, Judge White, created a Law Enforcement sub-group to meet with representatives from law

⁷⁸ Mr. Perry submitted correspondence to the Task Force on this position in March 2000, and the full text of the correspondence is contained in Appendix 6 to this report.

enforcement to discuss the itinerary and direction of the Task Force. The agenda for that meeting, held on July 20, 2000, in Brown Deer was to focus on law enforcement representation and what law enforcement would like to see come out as recommendations from the Task Force. A presentation of the law enforcement comments at the Brown Deer meeting is contained in another section of this report.

C. TASK FORCE EDUCATIONAL MEETING ON WISCONSIN LAW ENFORCEMENT TRAINING, POLICIES AND PROCEDURES⁸⁰

The next step for the Task Force was to educate the members on the training, guidelines and practices of law enforcement. The full Task Force met July 26, 2000, in Milwaukee to discuss this information. State Patrol Superintendent David Schumacher put together a presentation that encompassed officer training, law enforcement forms used, the data collection that is done by the Department of Transportation, Division of Motor Vehicles (DMV), and law enforcement agency complaint procedures. The State Patrol also provided a three-inch binder documenting training procedures, agency forms, and agency complaint procedures, which was distributed to each Task Force member.⁸¹

Part of the presentation at the July 26, 2000, meeting of the Task Force included an outline of the training standards and stopping techniques taught to all Wisconsin law enforcement officers. This presentation was designed to teach the Task Force members what new recruits are taught in regards to traffic stops, describe the various forms used by law enforcement across the state, what data from the forms is put into a database and a sample of citizen complaint policies from law enforcement agencies across the state.

To prepare for this meeting, the State Patrol brought together subject matter experts on traffic stop training from the State Patrol Academy, including Sergeant Ted Meagher and Sergeant Jerry Voight, and a former instructor from the Madison Area Technical College Basic Law Enforcement Training Program, Captain Brian L. Willison of the Dane County Sheriff's Office. They conducted a presentation that covered traffic stops, a video of traffic stops, overheads of traffic stop techniques and a review of the Wisconsin Department of Justice (DOJ) Law Enforcement Training Guide.

⁷⁹ Exhibit 14, pp. 60-65.

⁸⁰ Exhibit 16. Transcript of July 26, 2000 meeting.

⁸¹ Exhibit 8.

In addition to the training presentation, the plan for the meeting was to have a synopsis of the data that is entered into a database by the Wisconsin Department of Transportation, Division of Motor Vehicles (DMV). Ms. Lorelee Brumund, legislative analyst for the State Patrol and Attorney Amanda Schaumburg compiled the information for this presentation. In addition, Ms. Brumund obtained DOJ Training and Standards Board training documents and support documents, with assistance from Ms. Jean Rickman of the State Patrol. Sergeant Bill Harley, who works directly for Superintendent Schumacher, contacted over forty (40) law enforcement agencies to collect traffic enforcement forms and documents, including citations and warning notices.

In addition to the training material and agency forms, some of the Task Force members had requested information on citizen complaint procedures and whether or not Wisconsin law enforcement agencies have individual policies against racial profiling. To ensure the meeting was as informational and helpful to the members as possible, Superintendent Schumacher instructed his team to contact the same sample of agencies that had been asked to submit the forms used by law enforcement. Each agency was asked if they had a policy against racial profiling and to submit a copy of their citizen complaint policies.

Captain Willison began the presentation by discussing the vehicle contact training that all Wisconsin law enforcement recruits receive. That portion of the training accounts for sixteen hours of their 400-hour mandatory training at an academy. Every law enforcement officer in the state must attend one of the academies, which are operated throughout the state. They must attend either one of eight programs held at various technical colleges across the state or their own agency's academy if they have one. The City of Madison Police Department, the City of Milwaukee Police Department, the Milwaukee County Sheriff's Office and the Wisconsin State Patrol are the only agencies in the state that have their own law enforcement academy. The training guide/manual on traffic stops used by each academy is promulgated by the Wisconsin Department of Justice. This manual comprises the standard for law enforcement training in the State of Wisconsin. Captain Willison explained that the manual instructs on vehicle contact for a traffic stop, but that there is no one right way to do all vehicle contacts. A vehicle contact, as long as it stays within established parameters and has the elements necessary, can be

considered appropriate. He then discussed what an appropriate stop includes and that information is in the training manual which was included as a part of the informational packet distributed to the Task Force Members at the meeting.

State Patrol Sergeant Voight addressed the Task Force Members next. He identified the different tactics that officers are trained in, as well as the reasons and pros and cons for the use of those tactics. Sergeant Voight first played a video clip of actual footage of police cars equipped with video cameras that showed officers being hurt during routine traffic stops. Two of the officers portrayed in the video were hit by cars and one officer was shot by the stopped motorist. Sergeant Voight explained how the manual is a guide for officers on the proper approach during a motorist stop. Officers are taught when to radio in the stop, different ways to pull behind the motorist, and from which side to approach the vehicle. All of these techniques are done to ensure officer safety at the stop. He emphasized that approaching a stopped vehicle is one of the most dangerous activities a law enforcement officer performs.

State Patrol Sergeant Meagher addressed the Task Force and explained what has been referred to as “verbal judo.” This procedure deals with how to approach and what to say to the motorist to encourage a calm and professional contact. Officers are trained to greet the motorist with the greeting of the day, introduce themselves, introduce what agency they are from and then address the reason for the stop. For example, “Good morning sir, I’m Sergeant Meagher of the Wisconsin State Patrol, the reason I stopped you this morning is because you’re in excess of our posted speed limit”. Motorists are then provided time to explain their situation while the officer listens and assesses the complete event. The officer will get the information he/she needs, the name of the driver and if the car is registered and then go back to the police vehicle to fill out the paperwork. Sergeant Meagher informs the individual whether he is going to issue a citation or a written warning based upon the offense and what he has learned from his contact before he goes back to the car. He also explained that the length of time the officer is in the police vehicle depends on how busy the radio dispatch system is and how fast the driver and/or vehicle check can be run through the system. On the re-approach to the vehicle the officer will explain the written warning to the citizen which includes what information the warning contains and what it means. If the result was a citation the officer will

explain the citation to the motorist, the court date, what time they need to appear if they need to, the bond amount and what points are assessed with the violation. An officer wants to make sure that the motorist has all of the information he/she needs to answer any remaining questions about the stop before everyone leaves. New officers are taught that during a traffic stop, they want to respect other people as they would want to be respected and treated. All officers are taught that what is said during a traffic stop is as important as what is done.

Sergeant Voight then led a discussion of stops and searches that result from those stops. He discussed discretionary stops in response to Task Force Member questions surrounding the issue of these types of stops. He first indicated that there are some violations on traffic stops that do not allow any discretion, for example operating while under the influence (OWI), if the motorist is driving with a revoked license, or if there is a warrant out for the motorist's arrest. Officers do not have much discretion in how to handle these offenses.

For all other traffic stops, agency policies differ and the officer's ability to work the traffic is going to dictate their discretion and if a citation is issued. Different agencies focus on different issues in response to their community needs and environment. City law enforcement officers and sheriff's deputies respond to numerous service calls, while a state trooper's or inspector's emphasis is traffic law enforcement and highway safety. Service calls are responses to domestic disturbances, thefts, assaults, injuries or any other 911 calls. Although the State Patrol might respond to one of these calls if it is a highway crash or for backup to a home or business, service calls are primarily handled by the local law enforcement personnel. In all cases, whether a service call or a traffic stop, trust is the key. There must be public confidence that officers, in all agencies, are trained and are out there doing the right thing.

Sergeant Voight also addressed a question about consent searches. Some agencies have a requirement that officers on probation complete a specific number of consent searches before they leave probationary status. That requirement was implemented to permit new officers to perform all aspects of their job under supervision to gain adequate experience and to know how to conduct a search once they were on patrol alone. Sergeant Voight explained that recruits are taught how to recognize

indicators or sensory cues of criminal activity and are then taught proper search techniques and how to tactically, legally and professionally handle these situations.

Superintendent Schumacher then discussed the various forms used by law enforcement officials. He started with a description of the Uniform Traffic Citation (UTC), a form that was created by Wisconsin Statute which mandates that all agencies use the UTC in a traffic stop for violating state laws. The UTC has over forty fields to be filled in by the officer; voided sample UTC's were included in the manuals prepared by WSP staff and distributed to the Task Force Members. The UTC does have a field for the name, age and race of the motorists. It also has a space for the location and time of the stop.

Superintendent Schumacher then went through the sample of forms from other jurisdictions that were included in the informational binder. What was obvious was the vast difference in what forms are used, the style of forms used and what information is collected on those forms by various agencies throughout the State. Most agencies have a traffic warning / equipment repair notice in some style that is used, but what information is included on that form is widely varied depending on the agency. Superintendent Schumacher also addressed the Task Force's question about racial profiling policies; when sample forms were being collected for inclusion in the binder, each agency was asked if they had a specific policy against racial profiling. None of the responding agencies had a specific policy, but several pointed out their general policy against discrimination and felt those policies addressed racial profiling.

Attorney Amanda Schaumburg discussed the information that is collected and entered into the Department of Transportation, Division of Motor Vehicles (DMV) database system. The DMV receives the Uniform Traffic Citation from all Wisconsin law enforcement agencies as well as a variety of other information that is necessary to update the driver's record. What the DMV enters onto the driver record depends on a variety of factors; what offense occurred, where the driver is from, and how the ticket was adjudicated. The DMV does not directly key race, gender, name or address into the driver record. However, that information is accessible through that database by pulling up the driver license information. A person's name, age, address and race are recorded on the driver license record. This information, of course, is only there if the motorist that was

issued a ticket had a driver's license and the motorist gave the correct information to the issuing officer. The other information that is not entered includes the race of the driver and the location and time of stop, because that information is not necessary to update the driver record. The race identification that is recorded on the citation or warning notice is that of the perception of the officer at the time of the stop, after which the DMV person keying the information to the database has to decipher the officer's handwriting on the citation or warning.

The DMV does not capture warning/equipment repair notice information on their databases. These forms are not keyed into the DMV database and thus are not made a part of the driver's record. Officer verbal warnings are also not entered, for the obvious reason that there is no information to enter. To capture the extent of the data entered by the DMV consider that they enter over 800,000 written citations a year into the database and they estimate that there are about 2,000,000 equipment correction/warning notices issued each year that are not entered into the state database.

D. TASK FORCE EDUCATIONAL MEETING ON WISCONSIN LAW ENFORCEMENT COMPLAINT PROCEDURES⁸²

The presentation on citizen complaints was held over to the August meeting. Attorney Amanda Schaumburg brought a sample of five agencies' complaint policies and the Wisconsin Acts that created and amended state law regarding complaint policies. The agencies represented were the Lac du Flambeau Tribal Law Enforcement, City of Madison Police Department, Forest County Sheriff's Office, Milwaukee County Sheriff's Office and the Wisconsin State Patrol. These policies were chosen because of the diverse geographic and demographic areas they represented.

1987 Act 131 created the statute relating to citizen complaint policies. It requires that each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer employed by the agency. 1997 Wisconsin Act 176 is the only amendment to the statutes about complaint procedures, and it amended the law to add that the policy shall include a conspicuous notification of the prohibition and penalty under § 946.66 (§946.66 Wis.

⁸² Exhibit 17. Transcript of August 16, 2000 meeting.

Stats. about false complaints of police misconduct is created. Whoever knowingly makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture.)

The complaint procedures that were given to the Task Force Members as a sample of citizen complaint policies varied in detail, length and policies. In general, every law enforcement agency accepts written complaints, which initiate the formal complaint process. What constitutes a formal complaint process depends upon the agency involved. Larger agencies, like the Milwaukee County Sheriff's Office and the City of Madison Police Department have offices of professional standards to handle complaints. Smaller agencies, like the Lac du Flambeau Tribal Law Enforcement handle all complaints within the agency directly. In a formal complaint process, investigators will interview the officer(s) involved, witnesses and the complainant. They will then make a recommendation to the commanding officer and he/she will either affirm or reject the recommendation of the investigator. In all cases all parties involved are notified of the final decision.

Verbal and anonymous complaints are handled differently by different agencies. Verbal complaints will be accepted by most agencies, but how they are handled depends on the agency. For example, Forrest County Sheriff's Office will accept verbal complaints but they will not trigger a formal investigation unless an officer taking the complaint requests that it is investigated. Milwaukee County Sheriff's Office accepts complaints via the phone, and then sends out a complaint package that requests the citizen to put their complaint in writing. In both cases, the complaint process is begun by a verbal complaint.

Anonymous complaints are problematic for law enforcement agencies. The problem is that an investigating officer cannot verify the complaint or do an adequate investigation. Some agencies, like Lac du Flambeau Tribal Law Enforcement will not accept anonymous complaints at all. The Wisconsin State Patrol will accept anonymous complaints, but they do not trigger the formal complaint process. The supervisor of the officer named in the complaint will talk to the officer involved and discuss the complaint.

The agencies sampled all have time lines for their complaint investigations; it is between twenty-one (21) and forty-five (45) days. Who does the investigation depends on

the agency; Milwaukee County Sheriff's Office sends it to the Office of Professional Standards, Lac du Flambeau Tribal Law Enforcement has the Chief conduct the investigation and the Wisconsin State Patrol has a first line supervisor conduct the investigation. In all cases when the investigation is completed, whether it was a formal or informal investigation, the agencies discuss the matter with their personnel involved in the complaint and the complainant is notified of the results of the investigation.

Several Task Force Members noted that it was not a statutory requirement that the complaint policy be given to the public or that a number to call for complaints be published and handed to motorists who have been stopped. They also commented on the law itself, noting that it had only been amended once and that was to warn and perhaps punish those who knowingly make a false complaint.

E. WISCONSIN LAW ENFORCEMENT RESOLUTIONS

The Task Force received substantial input from Wisconsin law enforcement agencies, unions and associations from around the state at various times throughout the process. This input consisted of law enforcement executives providing educational programs to the Task Force at its public meetings, participating in public hearings and providing written comments to the Task Force in the form of resolutions or position statements. Some presented oral testimony before the Task Force while others summarized their positions in writing. In this section the Task Force has summarized the formal written resolutions and position statements which were presented to the Task Force by Wisconsin law enforcement groups. The full texts of these documents are contained in this report in Appendix 6.

1. The Wisconsin Law Enforcement Coalition (WLEC)⁸³

The Wisconsin Law Enforcement Coalition (WLEC) took an important leadership role in providing information and communications to the Task Force which were critical in the Task Force's efforts to define the problem and to recommend solutions. The WLEC presented two separate documents to the Task Force – one in August 2000, which addresses definitions, policies and procedures and one in October, which addresses data, collection issues. The WLEC resolution and the WLEC position statement are presented below.

a. Resolution of the Wisconsin Law Enforcement Coalition (WLEC)

Chief Douglas Pettit of the Oregon, Wisconsin Police Department, representing the Wisconsin Law Enforcement Coalition (WLEC) addressed the Task Force at its August 16, 2000 meeting. He described the make up of the WLEC and whom they represent and then he distributed a resolution drafted and adopted by the WLEC. The WLEC is made up of Wisconsin District Attorney's Association, Wisconsin Law Enforcement Association, Wisconsin Sheriff's and Deputy Sheriff's Association, Wisconsin Chiefs of Police Association, Wisconsin County Police Association, Wisconsin Conservation Warden's Association, Wisconsin Troopers Association, Badger State Sheriff's Association, Wisconsin Professional Police Officers Association, Wisconsin Police Executive Group and the International Association of Campus Law Enforcement. They all came together to write a position statement on race-based enforcement.

That statement started by acknowledging that effective law enforcement rests upon the integrity of law enforcement officers and the mutual trust and respect of the citizens. The WLEC condemned the use of law enforcement action based solely on race or ethnicity. Their statement emphasized that traffic laws serve to promote the safe and efficient use of the transportation system and the enforcement of traffic laws is an essential element in reducing deaths and injuries caused by motor vehicle crashes. They also emphasized that proactive enforcement efforts that are based on constitutional practices have been proven to reduce street crimes and increase the apprehension of criminals.

⁸³ Appendix 6.

With that in mind, the WLEC made the following recommendations in their position statement:

- The promotion and development of an extensive public education program on the procedures and policies of law enforcement traffic stops.
- The enhancement of law enforcement on-going outreach programs for and the communications with minority populations within individual communities.
- Law enforcement agency policies to reflect the standardized traffic stop protocols developed by the Wisconsin Department of Justice Training and Standards Board.
- The public funding of in-car video cameras for all Wisconsin law enforcement agencies.⁸⁴

b. The Position Statement of the Wisconsin Law Enforcement Coalition on Data Collection.

On October 18, 2000, the Task Force held a meeting, which had a two-fold purpose: to discuss the proposed findings and recommendations and reports of its writing teams; and to provide an opportunity for additional public and law enforcement input. A number of individuals provided comments to the task force about their experiences and perceptions on the issue of racial profiling. The Wisconsin Law Enforcement Coalition (WLEC) made a second presentation about their concerns and offered their recommendations in the form of both an oral presentation and a written position statement to the Task Force.

This WLEC Statement emphasized the Coalition's data collection concerns that are "practical and logistical in nature," adding "the desire to address these concerns before data collection is imposed should not be construed as a rejection of data collection. The most common reason given to collect the data is to establish if race based traffic stops occur." The WLEC identified *four* major concerns regarding the collection of data:

1. The *primary* concern of WLEC is the possible inappropriate comparisons of any resulting data collected during traffic stops with census or census like data, stating that "there are many reasons why census data is flawed for this purpose and would not make the best denominator."
2. The *second* WLEC concern is the possible "misinterpretation of why certain neighborhoods have higher enforcement than do

⁸⁴ Appendix 6.

other...” without taking into consideration the demand for calls from a particular area.

3. A *third* concern is the “method by which the data will be collected”, citing the problems associated with an individual officer’s identification of a person’s race and the task of asking a person his/her race; these approaches are both difficult.

4. The *fourth* concern is “what would become of that information” collected. “If the numbers are unfavorable, then police will be severely criticized. If the numbers are favorable, then critics of the police will say the data isn’t accurate or is being routinely distorted by police.”

The WLEC “believes that much more discussion is needed of what number should be used as the denominator to make racial data collection meaningful, before the collection begins and the inevitable comparisons are made.” A copy of the full text of the *Statement* is attached in Appendix 6.

2. Resolution of the Wisconsin Chiefs of Police Association (WCPA)

On September 6, 2000, the Task Force conducted its public meeting at which it identified key areas of agreement, which could form the basis of preliminary findings and recommendations. As part of its continuing outreach efforts, the Task Force also heard from Chief Hans W. Lux, Jr. of the Eagle, Wisconsin Police Department. Chief Lux is the president of The Wisconsin Chiefs of Police Association (WCPA), an organization representing nearly 500 law enforcement executives from throughout the state of Wisconsin. Chief Lux presented the WCPA *Resolution No. 2000-03* to the Task Force for its consideration. He explained that this resolution passed unanimously out of the general body of over 200 members and the Board of Directors. He further indicated that by adopting this resolution, the members of WCPA are showing their support to the statement that each and every law enforcement agency condemns law enforcement action based on race or ethnicity.

This resolution was formally adopted at the WCPA Conference on August 23, 2000.⁸⁵ The resolution presents a positive stand for Wisconsin Law enforcement condemning racial profiling and calling upon all police chiefs to take the lead on this issue. In recognizing that data collection is only one tool of law enforcement, Chief Lux also stated that there are other tools available for law enforcement. The *Resolution*

identifies the historical commitment of Wisconsin law enforcement to its communities and the importance of the mutual trust of citizens, and encourages individual agency policies that condemn profiling. In addition, the *Resolution* resolves:

- The Wisconsin Chiefs of Police Association believes all law enforcement agencies must refine department ongoing training programs to include components on integrity, ethics, diversity, and cultural awareness;
- Further, The Wisconsin Chiefs of Police Association encourages the promotion and development of an extensive education program on the procedures and policies of law enforcement traffic stops;
- Further, The Wisconsin Chiefs of Police Association encourages the enhancement of law enforcement ongoing outreach programs for communications with minority populations within individual communities;
- Further, The Wisconsin Chiefs of Police Association encourages law enforcement agencies to reflect the standardized traffic stop protocols developed by the Wisconsin Department of Justice Training and Standards Board;
- Further, The Wisconsin Chiefs of Police Association encourages public funding of in-car video cameras for all Wisconsin Law Enforcement Agencies.

The full text of the WCPA's resolution is contained in Appendix 6 of this report.

3. Resolution of the Wisconsin Sheriff's and Deputy Sheriff's Association (WSDSA)

The Wisconsin Sheriff's and Deputy Sheriff's Association (WSDSA) unanimously adopted *Resolution No. 7-2000, TITLE: Racial Profiling* on July 12, 2000, at its Spring Training Conference in Lac du Flambeau, Wisconsin. This *Resolution* states that a statewide focus group was formed to develop a position statement regarding the issue of racial profiling, and forwarded to the Task Force for its consideration. The WSDSA believes that "if a racial profiling bill is instituted in Wisconsin it will violate the rights of citizens not involved in any violation of Laws in Wisconsin, by requiring these citizens to divulge to law enforcement private information about them without probable cause of any crime being committed." The WSDSA also "believes, it would be disadvantageous for a law enforcement officer to have to ask what race a person is, and would also be an infringement of that person's civil rights." Further, the WSDSA

⁸⁵ Appendix 6.

“opposes racial profiling programs in Wisconsin.” A copy of the WSDSA *Resolution* is contained in Appendix 6 of this report.

4. Position of the Wisconsin Chapter of the National Organization of Black Law Enforcement Executives (NOBLE)⁸⁶

On October 18, 2000 the Wisconsin Chapter of the National Organization of Black Law Enforcement Executives (NOBLE) presented its position in a cover letter with appended documents from its national office which further defined Wisconsin NOBLE’s position on this issue. The president of Wisconsin NOBLE, Mr. Alvin L. Bishop addressed the Task Force and expressed a number of concerns and presented a number of suggestions. The Task Force had an opportunity to engage in a discussion with Mr. Bishop about the resolution and positions of Wisconsin NOBLE.

The Wisconsin Chapter of NOBLE “identifies racial profiling as an outcome of a more deeply rooted cultural institutional phenomenon”⁸⁷ [The] organization recognizes that data collection is not a solution to the problem, but stresses that it is a necessary “part of an overall strategy for eliminating racial profiling, both as a symptom and as a cure for bias-based policing.”⁸⁸ Data collection, as evidenced by the efforts in California, is not as time-consuming and expensive as many fear.⁸⁹ The Organization feels that integrity training, data collection, written policies and distribution of a law enforcement code of ethics should be mandated.⁹⁰ Although the Wisconsin Chapter of NOBLE endorses several of the resolutions put forth by other law enforcement associations, it differs from them on the issue of mandated versus voluntary data collection. The Wisconsin Chapter of NOBLE points out that its position is defined differently in focus from that represented by the executive director of the national office of NOBLE, Bob Stewart, who addressed the Task Force at its March 24, 2000 public forum.

The Wisconsin Chapter of NOBLE states that there is no correlation between the pervasiveness of racial profiling and the number of complaints received by the Task Force. “As the Task Force prepares to release its report, the Wisconsin Chapter of

⁸⁶ Appendix 6.

⁸⁷ Appendix 6.

⁸⁸ Appendix 6.

⁸⁹ Appendix 6.

NOBLE has a number of concerns. In the forefront of those concerns is whether the Task Force will, in some way, draw a correlation between the number of ‘complaints’ that the Task Force received and the pervasiveness of the practice o racial profiling in Wisconsin.”⁹¹

NOBLE states that there is evidence that law enforcement officers engage in racial profiling and that there are police related records of racial profiling in Wisconsin. In the letter to the Task Force, NOBLE indicated that “there are a number of areas that the Task Force may look to for additional documented complaints. They include complaints of police misconduct on file with the various police departments, fire and police commissions, Mayors’ offices, and Inquest and Court Records that have examined police conduct in police-related shootings. While we are not suggesting that the Task Force, at this date, actually review these areas of complaints, only that if it did, we are confident that incidents of bias-based policing/racial profiling would exist.”⁹²

NOBLE states that the notion of race-based law enforcement action has been deeply rooted in the African American community for years. “We urge the Task Force to take “judicial notice” based on information presented to the Task Force, that this is a long-standing practice and complaints of yesteryear have, most often fallen on deaf ears. There is ample evidence to indicate that this practice is deeply rooted in the African American experience with police that until the recent discussions many victims and potential victims, based on experiences passed along to younger generations, have simply learned to exist in this type of environment.”⁹³

NOBLE members have personally observed experiences between minority males and the police that reflect racial concerns. “The experiences of many Wisconsin NOBLE members, both personal and professional, indicate that in today’s society many young African Americans are not inclined to simply ‘go along.’ Our experiences also indicate that the majority police officers are actually afraid during their encounters with African Americans, particularly in portions of the inner city. This fear, as reported by the majority officers during exit interviews, combined with some type of perceived

⁹⁰ Appendix 6.

⁹¹ Appendix 6.

⁹² Appendix 6.

⁹³ Appendix 6.

aggressive behavior by an African American who believes that he has been stopped unjustly, is a recipe for a violent confrontation.”⁹⁴

NOBLE supports a strong statement that racial profiling occurs – not ‘likely’ occurs. “Therefore, we are convinced that it is critically important that Wisconsin move forward in its discussion and resolution of this issue of racial profiling. For this to occur, we believe that this Task Force must bring forth a strong statement that racial profiling does, in fact, occur. Not, as one Task Force member was heard to say, ‘likely occurs.’ To take that position, in our view, could also mean that the law enforcement executives who shared personal experiences with the Task Force, and those who have them but did not share them, are ‘likely’ to be lying as they are telling the truth.”⁹⁵ The full text of the Wisconsin NOBLE’s submission to the Task Force is contained in Appendix 6 of this report.

F. ADDITIONAL LAW ENFORCEMENT RESPONSES

1. Law Enforcement Coalition Meeting, July 12, 2000, Madison, Wisconsin

The Law Enforcement Coalition facilitated a meeting in July 2000, of twenty-three (23) representatives of Wisconsin law enforcement associations, to create a proactive and positive statement on racial profiling for presentation to the Governor’s Task Force. The participants at the meeting represented state, county, and local executives and “rank and file” officers, and represented various levels of understanding of the issue. However, the discussion among those present showed a sincere agreement that racial profiling did not have a place in enforcement, nor would it be tolerated. Presented with the fact that the International Association of Chiefs of Police (IACP) created a resolution on July 7, 2000, supporting voluntary data collection, and with a request to reach a consensus on a proactive response, those in attendance began to listen to each other.

David Schumacher, the Superintendent of the Wisconsin State Patrol, lead off the meeting with a presentation of what the Task Force is, what it hopes to do, of whom it is comprised, and what is happening in other parts of the nation on this issue. He provided a brief discussion on the efforts of Attorney Steven Rosenbaum of the USDOJ, Civil Rights Division, and the issue of consent decrees. He also presented the racial profiling

⁹⁴ Exhibit 5.

⁹⁵ Exhibit 5.

resolution from the State of Ohio, and discussed the elements of the agreement in Highland Park, Illinois, closing with an assurance that the Task Force needed law enforcement input.

Much of the following discussion among those present focused on data collection pros and cons, the issue of individual agency policies, and the need for proactive community outreach. Appleton Police Chief Rick Myers emphasized that the response from law enforcement must be proactive, not reactionary or defensive. The law enforcement approach must include elements of broad-based training on ethics and diversity, training on how to conduct traffic stops, funding alternatives for in-car video cameras and traffic stop protocols. Others agreed with Chief Myers and expanded on his ideas. Oregon Police Chief Doug Pettit, President of the Law Enforcement Coalition, emphasized a need to respond to the public perception of profiling and how law enforcement can better relate to the community. One of the more active discussions involved the problem of how a law enforcement officer is to either correctly identify the race of the motorist, or to ask the race of the motorist. It was pointed out that the issue to the public is often the perception on the officer's part, regardless of what is the true race of the person being stopped.

The meeting produced the *Wisconsin Law Enforcement Coalition Position Statement on Race-Based Enforcement*, which is summarized in preceding Section G of this Chapter and is attached to this report in Appendix 6. The meeting was productive in bringing about a discussion on key areas of concern. It further demonstrated and confirmed Wisconsin law enforcement's commitment to professionalism, equal treatment of all citizens, and safety for all concerned.

2. Law enforcement subgroup meeting, July 20, 2000, Brown Deer, Wisconsin

At the May 2000, Task Force Forum in Stevens Point, Task Force Chair Judge White created a law enforcement sub-group, designed to discuss detailed law enforcement concerns on the issue of racial profiling to assist the Task Force. Those present at this meeting hosted by Brown Deer Police Chief Steven Rinzel along with Judge White were Task Force members Superintendent Schumacher, Dodge County District Attorney Ramirez, Milwaukee Police Chief Jones, Assistant Madison Police Chief Nobel Wray, and Kenosha County Sheriff Zarletti. Other law enforcement

officials who attended the meeting included Whitefish Bay Police Chief Mikulac, Wisconsin Law Enforcement Coalition President and Oregon Police Chief Pettit, Wisconsin Chiefs of Police Association member and UW-Madison Police Chief Riseling, Brown Deer Police Chief Rinzel, Wisconsin Professional Police Association lobbyist Steve Werner, Wisconsin Trooper's Association Casey Perry, and Assistant United States Attorney, Melvin K. Washington of the Office of the United States Attorney in the Eastern District of Wisconsin.

The discussion began with Judge White introducing the Task Force and its mission. She also explained the educational and outreach approach that The Task Force adopted to reach its goals. Chief Jones also addresses the group and offered comments on his perspective of the role that the law enforcement members of the Task Force could play in communicating law enforcement concerns to the entire Task Force membership. Chief Jones indicated that although he is now a police executive, by virtue of his career as a police officer moving through the ranks, as a member of the Task Force he, along with four other Task Force members, can represent the views of not only the administrators of police agencies, but can also provide input on behalf of the "rank and file" officer. Despite these assurances most of those present felt that although law enforcement was represented on the Task Force itself, law enforcement was under-represented at the May, 2000, Forum which had specifically focused on law enforcement response. In conclusion Task Force Chair reiterated the Task Force's effort to gain the greatest input possible from law enforcement in Wisconsin and to incorporate their views into the Task Force report.

Chief Mikulac identified data collection as one of the stumbling blocks to any recommendations that may be made by the Task Force. Both Chief Mikulac and Chief Riseling expressed concern that the collection could not provide a complete picture of enforcement activity, and that its analysis is often subjective and misleading. However, Mr. Casey Perry expressed his belief that data collection was necessary, analysis could be accomplished, and the information provided could be used to identify other areas of concern. It was also noted that United States Attorney General Janet Reno has already mandated data collection among federal law enforcement agencies and that any analysis must also include a review of complaints and complaint procedures. Chief Rinzel was

concerned that collected traffic stop data would not adequately represent the demographics of the motorists passing through a community as compared to the demographics of the residents of that community. Assistant Chief Wray stated that from the perspective of the City of Madison, data collection provides information at the “front end” of a study by providing a beginning point which comparisons and improvements could be undertaken..

Chief Rinzel addressed the need for community involvement and trust. He began his comments by acknowledging that many law enforcement executives hesitate to comment on profiling for fear of being labeled a racist. However, he was willing to speak on behalf of law enforcement by stating that there are also other approaches to combating profiling, than data collection. Among those alternatives are cultural diversity training for officers, public education on traffic stops, a citizen academy on policing, and random supervisory review of video and audio tapes of traffic stops.

Further discussion focused on equipment needs, including computer hardware and software for data collection and in-car videos. All participants were in agreement that in-car video equipment is an excellent tool for not only profiling, but also offers overall officer and motorist safety. The primary issue involving in-car video cameras, however, is related to the cost of such equipment in light of tight agency budgets and competing needs. The same concern was expressed in regards to computer equipment to assist dispatch and to compile and report data.

The meeting concluded with a mutual respect for the effort and intensity the Task Force and the law enforcement representatives had given to this meeting. Task Force members and the law enforcement officials in attendance both had an opportunity to learn about and better understand a wider view on the complexity of racial profiling.

3. Summary of key presenters at the National Symposium on Racial Profiling and Traffic Stops sponsored by Northwestern University Center for Public Safety, September, 2000.

The National Symposium on Racial Profiling and Traffic Stops was sponsored by the Northwestern University Center for Public Safety (CPC), September 17 - 19, 2000, in Chicago, Illinois. Lorelee Brumund, legislative analyst for the Wisconsin State Patrol, Captain Robert Bereiter of the Wisconsin State Patrol, and Captain Dale Burke of the

University of Wisconsin-Madison Police Department were among the 400+ law enforcement officials, members of academia, and judicial representatives attending the Symposium. Many of the presenters at the Symposium, including Professor David Harris, Mr. Bob Stewart, and representatives from the office of Attorney Steven Rosenbaum, had previously addressed the Task Force at earlier meetings. Other professionals such as Professor Deborah Ramirez, one of the authors of the US Department of Justice sponsored report on racial profiling, and Superintendent Carson Dunbar of the New Jersey State Police also address the Symposium. Ms. Brumund has assisted the Task Force by providing summary information on the presentations from the Symposium, as reported below.

Alexander Weiss, CPC Director, introduced the two-fold focus of the symposium: 1) Racial profiling as an issue for law enforcement is complicated and comes at a time of relative police acceptance, and 2) It is now time to stop talking about *if* racial profiling exists and begin doing something about it. He also provided the closing remarks of the Symposium by noting the following: 1) Law enforcement must reflect on the real goals of leadership of an organization and go beyond simply writing policy to address racial profiling, 2) Data collection is necessary and vital to providing empirical data not only to identify a problem, but also to support law enforcement claims on how well agencies really operate, 3) More minority officers are needed, 4) Litigation against law enforcement has limited impact but its threat accelerates processes to avoid litigation by making chief executives develop equitable policies and practices, and 5) Good policing increases safety.

Professor Randall Kennedy, of Harvard Law School, instructed law enforcement not to get into the habit of “sloppy” thinking. He stated that racial profiling is evidence of “underprotection” of minorities by law enforcement. Thus, any time race is a factor in making a traffic stop (other than to meet a specific description of a suspect), profiling is taking place. Suspicion should not be based on race; that is an approach that will eventually alienate the minorities in the community, resulting in counterproductive relationships. Communities must support law enforcement in order for them to be completely effective; profiling eliminates that trust that leads to cooperation.

Professor David Harris, of the University of Toledo, suggests that by performing data collection during traffic stops, the law enforcement agencies acquire data to assist in making internal improvements without being forced to respond to government inquiries or legal mandates. He believes that “hit rates” (i.e. stops, which result in the confirmation of criminal behavior,) are about the same for each race though law enforcement makes more stops and arrests of minorities.

Chief Reuben Greenburg, of the Charleston, South Carolina Police Department, recommends that law enforcement learn how to “unarrest” someone, that is, to apologize for detaining a motorist if it is determined that he/she is not the person who is being sought.

Superintendent Carson Dunbar, of the New Jersey State Police, is currently managing his agency under a federal consent decree. He states that the biggest challenge associated with data collection and with a general approach to racial profiling, is the “front line” officer. The person who is out making daily and routine contacts with the public is the key to successful enforcement. Training, supervision, and administrative guidelines are vital to assisting that officer in conducting successful and equitable traffic stops.

Professor Matthew Zingraff, of North Carolina State University, noted that data collection is a complex issue and using aggregate data is not enough. Credible data must consider a wide variety of variables, develop accurate benchmarks, and be comparable to the population in question. Demographic population counts are not a good proxy for those who drive. Professor Deborah Ramirez of Northeastern University School of Law further discussed these points, in detail.

The panel on *The Impact on Highway Safety* introduced the idea that traffic crashes do not discriminate by race by using statistics to indicate that certain minority age groups are over-represented in the death tolls nationwide. The National Highway Traffic Safety Administration research shows that there was not as much of a change in the number of minorities stopped as a result of standard safety belt laws. *Chief Larry Austin* of the Florida Highway Patrol stated that safety belt laws are not about race but about safety. He noted that the Florida Highway Patrol voluntarily collects traffic stop data and

out of over 1.8 million traffic stops made annually, there have been few complaints regarding racial profiling.

Chief David Bejarano, of the San Diego Police Department, provided insight from an agency performing voluntary data collection. The reason for the data collection is to allay any perception of profiling, to identify trends and patterns in policing, identify any employee issues, and to support training efforts and policy development

The panel on *Federal Perspectives* was comprised of *Professor Jim Gringer*, a Federal Court Monitor from St. Mary's University, and *Kelli Evans and Donna Murphy* of the US Department of Justice, Special Litigation Section-Civil Rights Division (Attorney Steven Rosenbaum's office). These three speakers spoke of their responsibility to investigate discriminatory patterns or practices in law enforcement agencies. They focused on ways, including data collection to address the fact that the reality of police-community interactions is not always the same as its perception. The panel's suggestions on how to reduce chances that a federal investigation will be undertaken include review of the law enforcement agency's policies, procedures, training, data collection, supervision, accountability systems, citizen complaint procedures, officer discipline and open dialogue with communities.

Professor Clifford Fishman, of Catholic University of America, cautioned that there are some problems associated with the use of video cameras. He noted that camera use in some states is illegal on privacy grounds and the retention of the actual tapes and their use in court have not yet fully been clarified. It is possible that in the future all juries may require the viewing of videotapes before passing judgment on a particular case.

Two panels, on *Defense Perspectives* and *Plaintiff Perspectives*, addressed data collection both as a good tool for law enforcement and as a possible problem in the future. One panel member stated that data collected today may someday be used against an agency at a suppression hearing, or may be problematic if data is not readily available for litigation. However, the data can also be used to refute "appearances" that paint a poor picture of the law enforcement agency. Caution was expressed in regards to the extent to which data collected may be used in court.

Reverend James Meeks, of the Rainbow/PUSH Coalition provided the keynote speech. He stated that the “war on drugs equals a war on blacks”, and suggested that we all have “zero tolerance” for racial profiling. Among his suggestions for addressing the issue, he called for diversity in law enforcement officer training, promotions for officers of color, civilian review boards, changes in federal drug laws, mandatory drug treatment in prisons, and video cameras in all law enforcement vehicles.

G. CONCLUSION

There is no question within the law enforcement community in Wisconsin that racial profiling, in any venue, is an abhorrent concept that is not condoned, is not taught, is not part of policies or procedures, and is not a part of the law enforcement culture. The Governor’s Task Force on Racial Profiling repeatedly heard from national and local experts, from State law enforcement executives, and from representatives of State “rank and file” officers, that racial profiling has no place in law enforcement and is counter to the operations and training of officers charged with protecting the citizens of our State.

There are no investigations of any Wisconsin law enforcement agency being undertaken by the Special Litigation Section of the Civil Rights Division of the United States Department of Justice relating to complaints of racial profiling as of May, 2000.⁹⁶ Mr. Rosenbaum indicated that this Special Litigation Section derives its authority from the Omnibus Crime Control and Safe Streets Act of 1968⁹⁷ and the Violent Crime Control and Law Enforcement Act of 1994⁹⁸. This allows the federal government to bring “civil litigation against governmental agencies, city and state law enforcement agencies if there is a pattern or practice of conduct by law enforcement officers that violates the federal constitution or federal statutory rights. And what it does is it allows us to get injunctive relief—declaratory and injunctive relief—to change the management practices that have allowed this conduct to occur. It is not a statute that is aimed at going after an individual police officer and making them accountable. It shifts the level of accountability.” The 1994 Act “provides a vehicle for dealing with the management problems, the management deficiency that allows misconduct to occur.”⁹⁹

⁹⁶ Exhibit 14, p. 14.

⁹⁷ 42 U.S.C. 3789d(c)(3).

⁹⁸ 42 U.S.C. 14141.

⁹⁹ Exhibit 14, p. 3.

Although Wisconsin has not been specifically targeted on the issue of racial profiling, the law enforcement community recognizes that the issue of racial profiling, specifically in the realm of traffic stops, is not only currently on the front page of every newspaper in the nation, but is also vital to the issue of trust in the communities it is sworn to protect. Law enforcement is most effective and most efficient when it has the trust, respect, and cooperation of the citizens of every community and every motorist.

The laws of the United States prohibit racial and ethnic discrimination. The United States Constitution guarantees equal protection under the law. The Congress has adopted specific sections of the United States Code to address the issues of discrimination based on race, ethnicity, national origin, sex, religion, and disability.¹⁰⁰ The rights and privileges guaranteed by these laws are sacred to citizens and to law enforcement alike. All law enforcement agencies are sworn to uphold these “laws of the land.” Professor David Harris best stated this concept when he said, “My interest in this problem is very simple. You can find my agenda chiseled into the front of the United States Supreme Court where it says Equal Justice Under Law. That’s it.”

Adherence to the *Law Enforcement Code of Ethics* mandates intolerance of racial profiling in law enforcement. The *Law Enforcement Code of Ethics* is a statement, created in the 1960’s by the International Association of Chiefs of Police (IACP) and adopted by the Wisconsin Department of Justice, Training and Standards Bureau in 1970. The *Code* is mandatory training for every new law enforcement officer in Wisconsin and is a focal point of enforcement doctrines and policies. It reflects the specific guides by which members of the law enforcement profession strive to perform their service in an

¹⁰⁰ 42 U.S.C. § 14141 which prohibits depriving persons of any rights; 42 U.S.C. § 2000d et seq.; 42 U.S.C. § 3789d(c) which prohibits discrimination on the basis of race, color, national origin, sex and religion; and 42 U.S.C. § 12131, et seq. and 29 U.S.C. § 794 which prohibits discrimination against individuals with disabilities.

open, effective, and ethical manner. Effective law enforcement in a democratic society is possible only when the police honor and respect the basic standards of integrity, honesty, morals, loyalty, fairness, respect for others, and accountability.

The opening words of the *Code* are:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

“Good words do not last long unless they amount to something.”¹⁰¹

Chief Joseph

CHAPTER IV

Governor’s Task Force on Racial Profiling Findings and Recommendations

A. INTRODUCTION

The educational and investigative outreach to national and local experts, combined with input from law enforcement, community-based organizations, individuals, and various other submissions to the Task Force resulted in the following findings and recommendations.

The recommendations attempt to reflect the integrity and sincerity of the law enforcement community to address the issue of racial profiling during traffic stops. They reflect the concepts forwarded through extensive dialogue with law enforcement executives and law enforcement “rank and file” and attempt to find positive and proactive solutions to this complex issue. They also reflect the vital concerns expressed by the community, judicial, legislative and academic representatives both as members of the Task Force and from outreach efforts undertaken by the Task Force. A review of the problems and approaches of law enforcement agencies and communities throughout the United States also played a part in the development of the Task Force recommendations. The numerous presentations and documents from outside of Wisconsin provided a more comprehensive view of the issue than would have been possible if the focus had been only from our own experiences and resources. The issue of racial profiling is not unique to Wisconsin, and there are lessons to be learned from listening to others. As well, there is no one solution to the problem, and recommended solutions are not performed in a

¹⁰¹ Chief Joseph (1840-1904) was Chief of the Nez Perce Tribe. He made this statement as part of a speech during his visit to Washington D.C. in 1879.

vacuum. Each and every recommendation must be viewed as a part of the “whole package”, interdependent and cooperative, interrelated and connected. Racial profiling may be an omnipresent problem in the U.S., but it is approachable. It is an issue, which requires careful thought, extensive communication, and integrity.

The recommendations from the Task Force reflect a universal approach to law enforcement which encompasses: 1) administrative and supervisory initiatives and responsibilities to identify and address the issue; 2) administrative and supervisory action to communicate the issue and monitor personnel; 3) agency responsibility to develop and perform diverse and required training; 4) extensive community outreach and education on law enforcement accessibility, efforts and policies; 5) voluntary local data collection; and 6) the use of funding for improved equipment, technologies and document revisions. The recommendations are offered not in priority order, but in order of implementation. They reflect a practical administrative approach to implementation with the understanding that some of the efforts can be initiated simultaneously and in coordination with other efforts. The initial findings directly address the determination of the likelihood of racial profiling in Wisconsin and an accurate definition of racial profiling. These basic parameters are clearly identified to enable the subsequent findings and recommendations to be considered in the appropriate context.

B. FINDINGS AND RECOMMENDATIONS

FINDING: Racial profiling is a national issue and there is anecdotal evidence of its occurrence in Wisconsin. From statements and complaints solicited by Task Force members on the topic of racial profiling in traffic stops, the Task Force learned that:

- A diverse population of citizens from various racial and ethnic groups, ages and gender, varying economic and professional status, and from various communities in both urban and rural areas in the State of Wisconsin all complained of some degree of racial profiling.
- Procedures used to collect information from individuals and organizations about experiences and perceptions on racial profiling produced results similar to those from other areas of the country such as a low response rate from the public, while also revealing some profound statements identified from reported perceptions about or experiences with racial profiling.
- Citizen complaints conveyed to the Task Force shared some common threads. The four most common types of complaints include:
 - a. Traffic stops made because the driver “did not belong” in the car he/she was driving or in the neighborhood in which he/she was stopped;

- b. Rude officer behavior and negative law enforcement attitudes during traffic stops;
- c. Language and communications barriers; and
- d. Ineffective complaint procedures.

FINDING: *The term “racial profiling” has many different definitions.*

Racial profiling can be defined in various ways; the experts provided information assisting the Task Force in understanding when officers could appropriately consider race when enforcing the law. Professors David Cole and David Harris and Mr. Steven H. Rosenbaum each offered information and examples to illustrate the use of certain phrases to describe what is generally meant by the term “racial profiling.” Mr. Rosenbaum stated that racial profiling is “a term that has a lot of problems because it means different things to different people. He further indicated that racial profiling is “a loaded term,” and he “does not find the use of the term, without more, to be particularly effective.” Mr. Rosenbaum defined racial profiling using similar language to that which was offered to the Task Force by Professor David Cole. Mr. Rosenbaum described racial profiling to include racial discrimination or ethnic discrimination in traffic stops or in post-stop activities. He emphasized that “not every use of race gets labeled racial profiling.”¹⁰² Professor Cole defined racial profiling as “the use of racial generalizations” in deciding who to approach, who to investigate, who to stop, who to search or who to arrest. Both Mr. Rosenbaum and Professor Cole were careful to exclude from the definition of racial profiling the use of race for a specific identifying criteria based on the description of a suspect.¹⁰³

¹⁰² Exhibit 14.

¹⁰³ Exhibit 11.

RECOMMENDATION: *A uniform definition of racial profiling¹⁰⁴ must be used in all relevant law enforcement traffic stop policies and procedures in Wisconsin. The task force recommends the following definition:*

Any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity. Two corollary principles follow from this definition:

- Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and whom to search;
- Police may use race or ethnicity to determine whether a person matches a specific description of a particular suspect.

FINDING: *The task force and experts agree that public perceptions of racial profiling erode public confidence and trust in law enforcement making it more difficult for law enforcement to perform their duties and responsibilities.*

FINDING: *The task force and experts agree that law enforcement in Wisconsin should adopt written policies prohibiting racial profiling.*

RECOMMENDATION: *Law enforcement executives shall establish clear written policies which prohibit racial profiling or race-based decisions by law enforcement and which incorporate the definition of racial profiling as recommended in this report.*

Task Force Commentary on Establishing Policies and Procedures

1. Personal Address from Chief Executive

One basic method of reaching out to all law enforcement officers within an agency is the general distribution of a personal address written by the chief executive of the agency. This message must stress the individual responsibility each sworn officer has to practice only fair and impartial traffic law enforcement with the statement that all racial profiling is wrong, illegal, will not be accepted within the agency, and will not be tolerated if encountered by other law enforcement personnel with whom the agency works. The message should connect its prohibition of racial profiling to the fundamental

¹⁰⁴ This definition is contained in a report that was prepared for and with funding from the United States Department of Justice. The authors point out that when a jurisdiction is “seeking to determine if allegations of racial profiling are accurate, any analysis concerning the nature and scope of the problem will depend on the definition of racial profiling used.” The Task Force agreed and established a goal during the initial phase of its work of developing and adopting a clear and understandable definition of racial profiling for use in Wisconsin traffic stop policies and procedures.

policies by stating that traffic law enforcement decisions based upon profiling would be in direct conflict with the agency's mission, vision, values and goals.

A message of this type offers ownership of the problem to each and every officer who enforces traffic laws. It also lets the officers know that this mandate is taken seriously by the top executive and is a component of the agency's operational fundamentals. Written as a personal declaration and as a professional mandate, the letter is not only distributed to each officer, technician, engineer, scientist, clerk, analyst, and specialist within the agency, but it is also presented at each recruit and in-service training session. Such a message was written and distributed to all Wisconsin State Patrol personnel, both sworn and civilian, by Superintendent David Schumacher.

Superintendent Carson Dunbar of the New Jersey State Police (NJSP) takes his personal message of prohibition of racial profiling even further. He meets with each and every sworn officer of the NJSP to personally explain what new policies and procedures are in place for the NJSP. He meets with groups of 100 officers at a time, providing his directives and offering a chance for dialogue among those of the agency. This method provides a personal approach to an important issue, though it also requires a substantial amount of time. The Florida Highway Police (FHP) take a similar approach, including a personal message from the Superintendent in its training videos. The Superintendent introduces the video by explaining the impetus for and procedures of their voluntary data collection program, the benefits of the program, and the FHP's overall policies on racial profiling. This personal message provides leadership and direction for those officers who must implement the policies and procedures in their everyday work performance.

Presentations to the Task Force by several experts reflected the idea that the practice of racial profiling destroys the necessary relationship between police and the communities in which they work. Mr. Rosenbaum offered his comments on law enforcement's need to cultivate positive relationships with the community. He indicated that law enforcement needs community involvement to effectively operate. The system requires that members of the community serve as witnesses to crimes and as impartial jurors; the practice of racial profiling erodes that needed community support. Professor David Cole commented that the degeneration of community support is the strongest

argument against the practice.¹⁰⁵ “[Racial profiling] destroys the legitimacy of the law enforcement system, and particularly destroys it among those people who are targeted by the profile.”¹⁰⁶ Professor David Harris argued that the practice of racial profiling creates a “corrosive cynicism” that is directed “towards not just police officers and law enforcement, but the entire justice system among the people who are subjected to it.”¹⁰⁷

2. Present Efforts to Address the Issue

In Governor Thompson’s announcement forming the Task Force on Profiling, he stated that “Wisconsin is a leader in ensuring all our citizens, no matter race, gender or age are not discriminated against in any form.” A concerted effort to continue that mandate must be the focus of the *policies and procedures* developed and adhered to by each and every law enforcement agency in Wisconsin. Policies and procedures are integral to the administration and management of law enforcement agencies in that they further define the activities of the agency and offer guidance toward expected and accepted practices. Specifically, “policies” are defined as broad guidelines which provide direction for decision-making and which allow for some discretion in response to changing environments; “procedures” are defined as the step-by-step formats for the completion of activities which allow a task to be performed in a consistent manner.

The quest to prohibit profiling based on race or ethnicity has most recently been identified in resolutions and statements offered by representatives of the Wisconsin law enforcement community. Specifically, the Wisconsin Law Enforcement Coalition (WLEC) *Position Statement* of August, 2000, states that the Wisconsin law enforcement community must “...enhance individual agency policies to specifically condemn law enforcement actions based solely upon race or ethnicity.”, and the Wisconsin Chiefs of Police Association (WCPA) *Resolution No. 2000-03* of August 23, 2000, states “WHEREAS, the Wisconsin Chiefs of Police Association strongly encourages individual agencies to develop policies that condemn law enforcement action based on race or ethnicity...”

While most individual law enforcement agencies in Wisconsin currently do not specifically address the issue of racial or ethnic identity in their policies and procedures,

¹⁰⁵ Exhibit 14, p. 16.

¹⁰⁶ Exhibit 11, p. 55.

the overall intent of these policies is the equal treatment of all citizens. There are some examples of local policies which focus more directly on equality including the City of Beloit Police Department statement in its *Mission Statement and Values* which says “DIVERSITY - We believe that our diversity is strength which moves us towards excellence. We recognize and appreciate the ethnic cultures in the departments and the communities.” The City of Madison Police Department *Core Values* includes “valu[ing] diversity” as part of its Mission “to work in partnerships to create safer neighborhoods and preserve our special quality of life.”, while the Dane County Sheriff’s Office requires its members to “Provide sensitive, high quality, community oriented law enforcement services to all citizens” in pursuit of its mission to “serve and protect.”

From a national perspective, a number of respected professionals in the realm of law enforcement administration and research have routinely encouraged the development of policies prohibiting profiling. At the March 2000 meeting, Professor David Harris stated that it would be a “good idea...if every police department in the state was told that it must have a written policy on this business of racial profiling...it should define profiling broadly, not as stopped solely based on race, because we know that people don’t do anything based solely on one factor...But defining it broadly, there shall be no more racial profiling.” He continued by recommending that “...it should be incumbent on every police department in the state to sit down and think about these things, and to declare publicly where they stand so their behavior can be measured.” This sentiment is also shared by Mr. Steven Rosenbaum, who stated at the May 23, 2000, Task Force meeting in Steven’s Point that, “Whether you collect data or not, this issue of discrimination in traffic stops...is one that police management needs to be managing around...you need to have policies on what kinds of stop activities are appropriate; what type of discretion you’re giving to your officers and what guidance you’re giving in how to exercise that discretion.”

In each example identified above, the law enforcement community and its supporters have very clearly expressed a need that policy and procedures specific to Wisconsin law enforcement agencies prohibit discrimination based on race or ethnicity.

¹⁰⁷ Exhibit 12, p. 82.

3. Policies and Procedures Template

The Task Force thus recommends ***a policies and procedures template*** that can be tailored to individual law enforcement agency needs to clearly mandate a prohibition on racial profiling in law enforcement. The template is a modification of the Wisconsin State Patrol's *Policy and Procedure 14-3 Racial Profiling*, and is offered as a guide for individual agency review and revision to meet specific agency needs for creating a new policy or for reviewing an existing policy and procedure. This template can be found at Appendix 4.

Task Force Commentary on Emphasizing the Law Enforcement Code of Ethics

The message in the *Law Enforcement Code of Ethics*, identified earlier in this report is reiterated herein. The message remains vital to the dialogue between the administration/management of law enforcement agencies and those officers “out on the front lines”. The *Code* is more than just one element in the culture of law enforcement, and it is more than just something that is presented to new recruits. It is the fundamental duty of every law enforcement officer, and as such, is a concept that must be re-introduced in the realm of racial profiling.

The *Code* specifically states that a law enforcement officer's duty is to “respect the constitutional rights of all to liberty, equality and justice...” and each officer will “be exemplary in obeying the law and regulations of my department...” and “will never permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions.” Whether dealing with one another, the public, or the judicial system, everyone must know that the law enforcement officer will not deliberately or accidentally, consciously or unconsciously take unfair advantage of them. Citizens must feel confident that they can place their situation, status, self-esteem, relationships, job, career, or even their life in the officer's hands. Quite specifically, this *Code* identifies what is right to do.

Emphasis and focus of the *Code* is the duty of the chief executive officer of each law enforcement agency. Its value does not diminish with time, but rather becomes more vital with the growing diversity and complexity of law enforcement and the communities it serves.

FINDING: *The task force and experts agree that law enforcement in Wisconsin should communicate policies prohibiting racial profiling.*

RECOMMENDATION: *Law enforcement executives shall clearly communicate policies affirming that racial profiling or race-based decisions by law enforcement are illegal and wrong and will not be tolerated. Such policies should be disseminated not only to law enforcement personnel but also to the public at large.*

Task Force Commentary on Communicating Policies and Procedures

The establishment of the policies and procedures, which prohibit racial profiling or race-based decisions, is the first step in making them effective. The remaining tasks involve communicating to each law enforcement officer not only what is contained in the policies and procedures, but also the importance of the initiatives and why they were undertaken. The method of communicating these points is as varied as the law enforcement agencies themselves, and is dependent upon the most appropriate methods available at the time of implementation. The end result will be to ensure that law enforcement “culture” does not include racial profiling or discriminatory policing.

Public Resolution

Another approach to communicating the issue was taken by the State of Ohio in the form of the *Ohio Law Enforcement Non-Discrimination Resolution*. The Resolution, which “urged” conduct among all of Ohio’s law enforcement agencies to “ensure that racial profile traffic stops are not being employed by individuals within their agencies and that citizens are always treated with the utmost courtesy, respect, and fairness” was signed at a ceremony which included the announcement of a related \$50,000 training development grant. Led by Lieutenant Governor Maureen O’Connor, Director of the Ohio Department of Public Safety, other law enforcement administrators, organizations, and representatives affirmed that they do not endorse “practices dependent upon racial profiling” and will take “steps to ensure accountability and public trust.” Presented as a proactive approach to a difficult issue, the Ohio Resolution indicated to the law enforcement officers of Ohio, and to its citizens, not only that racial profiling is not tolerated, but that a consortium of those responsible for traffic enforcement stand together to prevent its occurrence.

Professor David Cole, Georgetown University Law Center, succinctly identified the focus of management and administrative tasks when he said that the first thing that

can be done about racial profiling is to “send a clear message that it is wrong.” Speaking at the February 22, 2000, meeting of the Task Force, Professor Cole’s statement sets the task, “Tell your officers that racial profiling is wrong.”¹⁰⁸

FINDING: *The Task Force, experts and Wisconsin law enforcement executives agree that police managers are responsible for the conduct of their officers and have the responsibility to provide daily supervision, identify activity trends, receive and review compliments and complaints, and modify officer behavior as necessary.*

RECOMMENDATION: *Law enforcement executives shall monitor personnel to ensure that traffic stops are consistently being conducted pursuant to agency policies and procedures, and to ensure that race-based stops are not being conducted within their agencies.*

Task Force Commentary on the Importance of Monitoring

Good law enforcement management principles include the monitoring of personnel on a routine basis, using the least invasive and disruptive methods possible, and with the goals of ensuring officer safety and improving overall performance of the agency. However, the monitoring of personnel can also be viewed as a possible disciplinary action by “field personnel” and as such, must be professionally conducted. When the U.S. Department of Justice (USDOJ), Civil Rights Division conducts investigations of police misconduct, it specifically reviews law enforcement management for monitoring and supervising staff. This USDOJ review scrutinizes procedures and systems that inform supervisors of officer actions and relay feedback to officers, as well as the implementation of these procedures and systems.

The intent of monitoring is to assist the agency by assisting each officer in improving his/her conduct during the performance of duties in a safe, effective, and respectful manner. Law enforcement is vital to our society as a whole, and indeed must be encouraged to do its work as best it can. As stated by Mr. Rosenbaum at the May 2000, Task Force Forum in Steven’s Point, “We do not have to abandon traffic stops in order to avoid discrimination. Nor do we have to engage in discrimination for traffic stops to be an effective law enforcement tool. The Supreme Court has ... “acknowledge[d] that even ordinary traffic stops entail a ‘possible unsettling show of authority;’ that they at best ‘interfere with freedom of movement, are inconvenient and

¹⁰⁸ Exhibit 11

consume time,’ and at worse, ‘may create substantial anxiety.’ For both the officer and the motorist, the tension can produce confrontations, both verbal and physical, that can escalate a routine traffic stop to an incident with serious consequence.”¹⁰⁹

Personnel can be effectively monitored by identifying if, how, and by whom, “routine” traffic stops are consistently being conducted contrary to agency policies and procedures. The International Association of Chiefs of Police (IACP) 1999 Resolution *Condemning Racial and Ethnic Profiling in Traffic Stops* states that “...all law enforcement agencies are urged to examine their interdiction strategies and their mission and value statements, training programs, field supervision, evaluation of citizen complaints and traffic stop data and other efforts to ensure that racial or [ethnic]-based traffic stops are not being employed within their agencies...”¹¹⁰

The tools available to law enforcement agencies to conduct monitoring are varied and dependent upon specific enforcement tasks, the technology available within the agency, and the size of the agency both in terms of staffing and geography. No one tool is best for all agencies, but rather a combination of complementary and affordable approaches is possible for every agency. However, because the majority of contacts with citizens are face-to-face with field personnel, the initial focus is best placed on how to monitor daily tasks.

Field supervision is a critical part of monitoring personnel. It can be conducted by techniques including supervisor ride-alongs, assistance at traffic stops or random review of field procedures as opportunities arise. These procedures allow the supervisors to view and assess personnel while performing their job duties.

Task Force Commentary on On-duty Communications

On-duty communications can be conducted in numerous ways depending upon the technologies available within the agency. Dispatch systems, which permit an instant relay of verbal communications, officer location, and driver and/or vehicle records requests, such as Communication Aided Dispatch (CAD), can help track “real-time” officer actions. Mobil data computer (MDC) systems provide an electronic record of comments, record retrieval and report writing that can be either immediately monitored

¹⁰⁹ Quoting Whren v. United States, 517 U.S. 806, 817 (1996).

¹¹⁰ Appendix 6

by supervisory personnel or reviewed at a later date. These are technologies that may or may not be available to all law enforcement agencies, and are simply an additional tool to the monitoring of routine radio/dispatch traffic. In each case, a review of the communications among officers can indicate areas of trouble with language, attitude, and professional response.

Task Force Commentary on Review of Contact Reports

Supervisory review of various contact reports is a common and routine occurrence among law enforcement agencies and can be used to detect racial profiling. Most agencies have policies that require scheduled review of specific contact reports by both front-line supervisors and managerial staff. Review of these documents offers a rudimentary look at officer conduct, providing a beginning point for further investigation.

Task Force Commentary on Officer Tracking /Early Warning System

Officer tracking systems, which are heavily dependent upon a sophisticated computerized system, are a relatively new procedure not currently used by many law enforcement agencies. The purpose of the tracking system is to provide an early indication of overall conduct including officer mistakes, negative behavioral patterns, or misconduct so that the officer can be immediately approached and corrected. This technique is currently being used by the Pittsburgh, Pennsylvania Police Department as part of its federal consent decree. The system tracks officer conduct in terms of days on duty, tardiness, absenteeism, complaints, contacts, and commendations. It provides a tool for supervisors to determine how an officer carries out established policies and procedures and compares with other officers of similar tasks and opportunities. The computerized system tracks the officer, but the supervisor has to perform the analysis and take corrective action as indicated. Mr. Bob Stewart, Executive Director of the National Organization of Black Law Enforcement Executives (NOBLE) indicated at the March, 2000, meeting of the Task Force in Milwaukee that an early warning system can help to identify “Anything that begins to tell you that an officer may be having problems.”¹¹¹

The idea of monitoring and supervising an agency’s personnel is not new; it has just taken on a new importance within the realm of racial profiling. In his closing remarks to the Task Force in March 2000, Mr. Bob Stewart, Executive Director of the

¹¹¹ Exhibit 12

headquarters office of the National Organization of Black Law Enforcement Executives, (NOBLE), stated that “If we in the industry don’t begin making some headway towards solving these problems, [a consent decree] is where we move to. And I don’t know that this one is particularly popular among police officers or police chiefs, because in civilian oversight, one size doesn’t fit all...but we in policing have an opportunity to demonstrate to the public that we are capable of cleaning our own house, and we will probably never be accepted as true professionals until we demonstrate that.”¹¹²

FINDING: Law enforcement in Wisconsin has demonstrated a willingness to voluntarily address even the perception of racial profiling through positive, proactive programs including supervisory initiatives, enhanced training, initiatives to assist in management information and data systems, and community outreach.

RECOMMENDATION: Law enforcement should institute or enhance training for Wisconsin law enforcement personnel, for both recruit and in-service training, to prohibit racial profiling, in cooperation with the Wisconsin department of justice training and standards bureau and the law enforcement standards board, including programs in the areas of:

- &The Law Enforcement Code of Ethics;
- &Cultural Diversity;
- &Interpersonal and Communications Skills;
- &The Equal Protection Clause (14th Amendment); and
- &Federal Laws which prohibit racial and ethnic discrimination in law enforcement traffic contacts.

RECOMMENDATION: Law enforcement agencies should use the standardized traffic stop protocols developed by the Wisconsin Department of Justice Training and Standards Bureau.

Task Force Commentary on Current Training Standards

Law enforcement in Wisconsin enjoys an excellent and professional history of both recruiting and on-going training of its personnel. The Wisconsin Department of Justice (DOJ) Training and Standards Bureau provides comprehensive training requirements and guidelines that are continually monitored and modified to meet new challenges, techniques, needs and ideas in all areas of law enforcement. Currently, the Law Enforcement Standards Board requires Wisconsin law enforcement to complete a minimum of 400 hours of instruction. Included in this required training are ten (10)

¹¹² Exhibit 12

major areas of focus: professional orientation, defensive tactics, care and use of firearms, community awareness, emergency medical services, legal procedures, operation of patrol vehicles, traffic laws and accident investigations, patrol operations, and investigations. Each focus area identifies a minimum number of hours of required instruction ranging from seven to forty-seven hours and provides detailed training on all aspects of a particular focus area.

By statute, on going training for existing law enforcement officers is established by the Law Enforcement Standards Board. The current minimum requirement is twenty-four hours per year, in subject areas where law enforcement agencies determine training is necessary. Some on-going training is required by statute, to be provided as part of the twenty-four hours of annual training. Training of all officers must be documented by the law enforcement agency and that documentation must be submitted to the Law Enforcement Standards Board for recording. Law enforcement agencies may exceed the minimums for recruit and on-going training, and may supplement the funds received per officer for training expenses.¹¹³

A law enforcement officer is like any other professional who requires review of existing techniques and policies, instruction on new techniques and policies, and education on new ideas. The enhancement of existing training for both recruits and officers in the realm of racial profiling is a good idea for Wisconsin. During his May, 2000 presentation to the Task Force, Mr. Steven Rosenbaum identified training as one of the duties of “police managers responsible for the conduct of their officers.”¹¹⁴ At that same meeting, Chief Richard Myers of the Appleton Police Department and Senator Gwendolynne Moore addressed the need for more officer training, and Lieutenant Brian Willison of the Dane County Sheriff’s Office expanded on their ideas. Lt. Willison stated that, “Maybe the focus we should be looking at is better training of law enforcement officers. The better we’re trained...to recognize the reasons, to recognize these inadvertent offenses, to recognize the offensive officers among us in a large agency the

¹¹³ Some funding for training is provided by the Board from moneys collected from penalty assessments; each officer in Wisconsin is allotted a set amount of money for training under this statute (Wis.Stat. (165.87).

¹¹⁴ Exhibit 14.

better to recognize those that work as improperly profiling people. We can single them out and deal with those problems...”

Task Force Commentary on Enhanced Recruit Training

Most law enforcement agencies within Wisconsin emphasize their policy on ethical behavior and introduce the *Law Enforcement Code of Ethics* (previously discussed in this report). It seems only natural, then, that instruction on the ethics of law enforcement be enhanced by a new focus taking into consideration racial profiling. Though not specifically phrased as such, the *Code of Ethics* addresses combating racial profiling. Training of new recruits must take a more aggressive approach by correlating the unacceptability and intolerability of racial profiling in all aspects of a law enforcement officer’s life, regardless of the tasks involved.

Focusing on the *Code of Ethics* is only a start. Specific training on the diversity of the community in which officers live and work is vital to the implementation of that Code. The Law Enforcement Standards Board must consider the various cultures that are now an integral part of Wisconsin and establish basic guidelines for making new recruits aware of those cultures. Recruit training can include cultural diversity by employing a variety of methods particular to the needs of the community involved. The Board has a wealth of resources, both from cultural communities and law enforcement agencies from which to create such guidelines.

The final step to the integration of cultural awareness and appreciation for diversity is a development of interpersonal skills which allow the officer to communicate what he/she has learned. Law enforcement is aware of the need to communicate professionally and to discourage verbal confrontation. However, instruction related to cultural diversity must also include communications with those cultures, to be effective and respectful. The Law Enforcement Standards Board, which oversees law enforcement training in Wisconsin, must develop new guidelines for more effective communications with diverse cultures.

Task Force Commentary on Enhanced In-service Training

The purpose of in-service training is to review current and provide new instruction. Instruction on cultural diversity should enhance current in-service training. Just as recruits must be informed about changing communities and cultures in Wisconsin,

existing officers must also learn about changes in communities they thought they knew, and about new cultures. Equal protection for all citizens is easiest to achieve when the officer is familiar with the community. Chief Richard Myers of the Appleton Police Department has been a leader in Wisconsin promoting cultural understanding between his officers and the diverse communities they serve. His methods of community involvement in diversity training should be reviewed and considered by all law enforcement agencies. In addition, the Law Enforcement Standards Board should review the need to enhance training and consider cultural diversity and communication skills for inclusion in the twenty-four hour minimum on-going training requirement.

Task Force Commentary on Standardized Traffic Stop Procedures

All law enforcement officers must learn how to effectively conduct traffic stops with culturally diverse persons. Beyond the focus on diversity and communications, the officer must be reintroduced to the basics of proper traffic stop procedures. Those procedures include not only how to safely approach the vehicle, but how to respectfully address the motorist, effectively answer questions, and respond to other needs or motorist attitude. One way to ensure this kind of stop is to reinforce the proper traffic stop procedures for all cultures and environments during on-going training. Both the Law Enforcement Standards Board and individual agencies must determine the best way to standardize, enhance, and in some instances, reinstate, this training. The desired result is a motorist who, though not pleased with being stopped for a traffic violation, will leave the scene with an informed understanding of what occurred. A motorist should know who the officer is, why the stop was made, what the implications of the motorist's behavior are, what the outcome of the stop (e.g. citation or warning) will be, and who to contact for further questions or comment on the stop or the officer. In short, the desired result is a professional and respectful stop.

Officers from the Wisconsin State Patrol and the Dane County Sheriff's Office, under the direction of Superintendent Schumacher, provided a detailed review to the Task Force of how traffic stops are conducted in Wisconsin, at the July, 2000, meeting in Milwaukee. During that presentation, it was noted that officers have a difficult task in safely conducting a traffic stop, communicating effectively with the motorist and passengers, and bringing the traffic stop to a positive conclusion. Proper traffic stop

procedure is one of the primary elements of overall law enforcement instruction and is reviewed and improved upon as experience and needs dictate. The Wisconsin Chiefs of Police and the Wisconsin Law Enforcement Coalition, in separate position statements, included “encourage[ment of] law enforcement agencies to reflect the standardized traffic stop protocols developed by the Wisconsin Department of Justice Training and Standards Board.”

FINDING: The Task Force, law enforcement agencies and organizations in Wisconsin agreed that even the perception of racial profiling should be affirmatively addressed with proactive, positive measures for law enforcement and the community.

RECOMMENDATION: Law enforcement should engage in community outreach and encourage community input that should include but not be limited to:

- The development and distribution of a brochure explaining traffic stop protocols and procedures for submittal of citizen letters of commendation or complaints about law enforcement contacts;
- The development and promotion of an extensive public education program (e.g. public service announcements, community meetings) on the appropriate procedures and policies of law enforcement personnel
- The creation of business cards to distribute to motorists at the conclusion of every traffic stop where no citation or other written information is given identifying the law enforcement agency making the stop;
- Sponsoring and attending community meetings to address concerns, identify solutions and discuss agency performance.

RECOMMENDATION: Law enforcement agencies should review and make modifications as necessary to citizen complaint procedures ensuring that they are easily accessible and clearly inform citizens on how and where to contact law enforcement and file letters of compliment and complaints.

Task Force Commentary on Community Outreach Initiatives

The community outreach recommendations are intended to foster good relations between law enforcement agencies and the communities they protect. These recommendations may assist law enforcement in communicating their policies and procedures to the community. They also allow the community a forum to address its concerns directly to law enforcement.

These measures should be implemented and tailored to each individual community. Implementing measures that are based on the individual needs of the community is the best way to achieve success in removing real or perceived racial profiling. At the March 2000 Task Force forum, Professor Harris emphasized that the

actions undertaken to address this issue should be local. Local agencies can best interpret what is needed and best understand how to establish these programs.

Task Force Commentary on Developing a Brochure to Educate the Public on Traffic Stops

A brochure that educates the public on traffic stop protocols would be placed in frequently visited places in the community. These brochures can serve as a tool to help the law enforcement convey to possible motorists the efforts that go into a traffic stop from the decision to stop the vehicle to issuing a citation or warning notice. Included would be information on reasons why vehicles are stopped, on what officers are looking for during a routine traffic stop and on what action officers take during a stop. There can also be information on how to contact local law enforcement for more information on an issue and how to file a letter of compliment or complaint. Chief Myers of the Appleton Police Department recommended the development of a similar handout such as this for motorists that describe the standard traffic protocol for law enforcement officers.

Task Force Commentary on Developing Public Service Announcements on Traffic Stops

Public Service Announcements (PSA) can be used to reach broad sectors of the community to educate on traffic stops. Like the brochure, the PSA can help the community understand why a police officer chooses to stop a vehicle and the actions an officer will take during a traffic stop. The PSA can also inform the public that each law enforcement agency has a number to call to compliment an officer who does a good job or file a complaint. The Wisconsin Chiefs of Police Association (WCPA) recommended this action their *Resolution 2000-03*; they encourage the promotion and development of an extensive public education program on the procedures and policies of law enforcement traffic stops. Public education about traffic stops could occur through PSA's on radio, informational brochures placed at high community traffic areas, and through community meetings held by local law enforcement.

Task Force Commentary on Developing Information Cards

Information cards have been discussed extensively throughout the life of the Task Force. City of Madison police officers hand out business cards, which indicate the

officer's name, the agency he/she works for, and a contact number. This card could be distributed at every traffic stop for which a citation or written document is not issued.

Task Force Commentary on Community Meetings

Law enforcement officers must reach out to the community they serve. Community outreach meetings will help the agency and the minority community to understand each other's needs and to identify problem areas, where communication is failing or where the law enforcement agency needs to improve services. This could entail meetings held jointly by the community and the law enforcement agency to develop a dialogue on the concerns of each party. The WCPA adopted this recommendation in *Resolution 2000-03*; the WCPA encourages the enhancement of law enforcement ongoing outreach programs for communications with minority populations within individual communities.

Community outreach meetings will foster friendly relations between the community and law enforcement. Chief Myers recommended this measure; his agency currently holds these meetings in the minority communities it serves. His agency has also created the position of intercultural department coordinator. With assistance from this position the Appleton Police Department has held community forums in the Hmong and African American Communities. Meetings such as these can and will serve as conduits of understanding between local law enforcement and the communities they serve.

Task Force Commentary on Complaint Procedures

A need for understanding and notification of citizen complaint procedures is evident in several of the agreements between law enforcement and local communities, existing Wisconsin statutes, and consent decrees authored by the United States Department Of Justice. In the Ohio Resolution signed by the Lt. Governor and executives of law enforcement, it was resolved that law enforcement agencies would review their complaint policies and make changes if necessary so citizens may contact the appropriate agency. Rhode Island Law requires law enforcement agencies to review and make the necessary changes to their complaint procedure. The Highland Park, Illinois agreement between the police department and the city requires the department to inform citizens of their right to make a complaint and how to make a complaint. The New Jersey State Patrol (NJSP) federal consent decree requires all officers to carry information on how to

make a citizen complaint and to inform motorists of the toll free number they can call to do so. The NJSP also provides the information on a web site.¹¹⁵

This recommendation highlights the importance of the knowledge of that information for citizens and law enforcement. Agencies are able to track compliments and problems with a better system and citizens will feel they can take action on an issue. Easily accessible complaint policies and procedures are a vital tool for local law enforcement agencies to use to check officer performance in their communities.

FINDING: *The extent of racial profiling cannot be determined without empirical study and comprehensive analysis. The Task Force and experts agree that data collection is an appropriate component for addressing racial profiling and is a component in effective management which can help build accountability and protect the integrity of law enforcement agencies and personnel.*

FINDING: *The Task Force acknowledges that data collection is an appropriate component of a law enforcement management information system, which can ensure accountability, and will protect the integrity of law enforcement agencies and personnel.*

RECOMMENDATION: *Law enforcement executives have demonstrated a willingness to voluntarily collect local data on traffic stops. National and local experts and the task force have determined effective traffic stop data collection systems should include the following criteria:*

- Minimum data to be collected:
 1. Motorist race or ethnicity;
 2. Motorist gender;
 3. Location of the traffic stop;
 4. Reason for the traffic stop;
 5. Indication of any search conducted during the traffic stop;
 6. Outcome of the traffic stop.
- Methodology of data collection;
- Officer procedures for data collection at traffic stops;
- The establishment of comparative benchmarks that will be used.

¹¹⁵ Exhibit 17.

RECOMMENDATION: *Based on information from national and local experts, it is strongly recommended that law enforcement agencies collect the necessary data to address racial profiling in an organized manner that permits the development of meaningful and useful information.*

- The law enforcement community should explore developing partnerships with academic, governmental, and other qualified institutions that can assist with the development of internal and external benchmarks and analysis of data.
- The results of data analysis should be used by law enforcement in the design and development of officer training programs, officer and agency evaluation, and crime prevention strategies and techniques.
- Law enforcement agencies should disseminate their findings to the public regardless of whether the data analysis indicates a problem of racial profiling or not.

Task Force Commentary on Data Collection Issues

The Governor's Task Force heard from experts, such as Professor David Harris and Mr. Steven Rosenbaum, and reviewed materials by various authorities, including the reports from the United States Justice Department and the General Accounting Office, discussing racial profiling and data collection. Each source stated that data collection can be an important element in avoiding racial profiling, but that it is not the sole answer.

"Local law enforcement agencies are all different, there is no 'one size fits all,'" said Professor Harris at the Task Force forum in March 2000. When asked if he sees these measures as state mandates or as local actions Professor Harris responded that they should be local actions; each agency knows their community and personnel best. Both Chief Lansdowne and Captain Davis of San Jose, California Police Department, indicated that it is important to have a data collection system that works for your community. Community and agency (both executives and "rank and file") "buy in" are crucial if the data collection system in place is going to be successful. Localized data collection allows each individual community/agency to highlight and collect the information that is important to a specific environment.

In commenting on the importance of developing plans that recognize local needs, Mr. Rosenbaum indicated that "the New Jersey plan has some good practices in it, but there are 17,000 law enforcement agencies in this country ranging from agencies with two or three officers to the New York City Police Department which has 38,000 or

39,000 at last count. Different law enforcement agencies have different functions to fill. Traffic stops on interstate highways are going to be different than traffic stops in downtown Milwaukee. You have to take contextual issues into account in deciding what works best in your department.”¹¹⁶ The law enforcement entities know best what methods would work and what data would need to be collected. Mr. Rosenbaum also stated that: “This is not an either/or debate between data collection and other measures... The best way is to meld them, use the best out of both approaches, both the data driven and policing perspective, and the training and community relationships perspective to come up with a comprehensive plan for addressing the issues surrounding racial discrimination and traffic stop behavior.”¹¹⁷ Mr. Rosenbaum also discussed the importance of having the right benchmarks for data collection. The GAO Report on racial profiling and data collection also highlights the importance of having a system for collecting data and analyzing data “accurately.” The GAO report like other expert sources indicated that if the data might not be conclusive if the right benchmarks are not in place.

The validity of the benchmarks used when analyzing any data is crucial if the data is to have any meaning at all. Professor John Lamberth described benchmarks as “knowing the minority percentage of those stopped, searched, and arrested by law enforcement...” and understanding that it “only takes on significance when it can be meaningfully compared to the percentage of that group who are eligible to be stopped.”¹¹⁸

Studies that lacked credible comparative data have been heavily criticized and in the end have not been useful because of the disagreement over the method of analysis and the results which flowed therefrom. Appropriate and credible denominators must be tailored to the particular area or community to ensure accurate and useable data and resultant information.

The Wisconsin Law Enforcement Coalition (WLEC) echoed concern over using the correct denominator during data analysis. Using census data to determine the percentages of people stopped is an inappropriate comparison to make. According to the

¹¹⁶ Exhibit 14.

¹¹⁷ Exhibit 14.

¹¹⁸ William H. Buckman & John Lamberth, “Challenging Racial Profiles: Attacking Jim Crow on the Interstate,” THE CHAMPION Sept./Oct. 1999.

WLEC *Position Statement* census information is the incorrect benchmark, or denominator, to use because it does not account for drive patterns, where different people are on the road at different times. Census data does not reflect who is driving, females make up a greater percentage of the population but males drive more. Another important factor census data does not account for is the distribution of traffic violations. By looking at information from accident insurance companies, it is evident that male drivers are more aggressive than female drivers and that younger drivers are more aggressive than older ones.

The WLEC also raised concerns about data collection regarding the misinterpretation of higher enforcement in some areas than in others, noting that demand for service increases the number of officers in the area which can lead to more stops in a concentrated area. These concerns emphasize the necessity that data collection be done at a local level; local agencies can adapt their study to account for higher enforcement areas, or explain results in an analysis. Local agencies know what information to collect, how to collect it and how to cope with external factors in relation to the study. Finally, and most importantly, the results of the data collection can be analyzed and used locally. The results will be interpreted by local agencies enabling them to make any necessary changes to ensure effective and efficient law enforcement in the community.

Currently the State of Wisconsin collects limited data fields in various databases within the Department of Transportation, Division of Motor Vehicles. Compiling that data into useable information and analyzing it for facts about racial profiling would be difficult, but could possibly provide limited information regarding jurisdictions that need to take a closer look at racial profiling issues. The State of Wisconsin does not currently have the mechanisms in place to collect statewide data. The Wisconsin Department of Transportation system is utilized to maintain driver's records. The data is entered onto each record with the violation and adjudication. The Wisconsin Department of Transportation does have information on race and gender, but it is not readily accessible for all applications; several different queries would have to be run on the DMV system to obtain the information being sought.

FINDING: *There are few standardized traffic stop documents issued to motorists in Wisconsin similar to the Uniform Traffic Citation (UTC). There is no statewide standard for notices that provide written warnings to motorists for traffic or equipment violations.*

RECOMMENDATION: *The Department of Transportation should conduct a study on the need for, the fiscal impact, administration and effect, if any, on individual motorists driving records, of a uniform traffic warning/equipment repair notice for Wisconsin.*

Task Force Commentary on the Study of a Uniform Warning

This recommendation is for a study of the need for a traffic warning /equipment repair notice. The Wisconsin Department of Justice, Training and Standards Bureau would be a vital partner along with the law enforcement community and the Department of Transportation in studying this recommendation. Any study of this issue would require not only identification of the impact of the standardized notice on the administering agency, but also the identification of:

- The law enforcement community need for a standardized notice;
- Its use as mandatory or voluntary;
- Any incorporation of the notice into a standardized traffic stops protocol and training.

The Task Force Commentary on the Uniform Traffic Citation (UTC)

At the July, 2000, meeting of the Task Force, the Wisconsin State Patrol and the Dane County Sheriff's Office, under the direction of Task Force member State Patrol Superintendent Schumacher, provided a comprehensive training session which included a presentation on the forms and documents used by Wisconsin law enforcement agencies during traffic stops. Part of the presentation focused on the Uniform Traffic Citation (UTC) form, which is mandated for use during traffic stops by Wis. Stat. § 345.11, which states that "On and after July 1, 1969, the uniform traffic citation ... shall in the case of moving traffic violation and may in the case of parking violations and all violations of Chapter 194 (Motor Vehicle Transportation) be used by all law enforcement agencies in this state which are authorized to enforce the state traffic laws and any local traffic laws enacted by any local authority in accordance with Wis. Stat. § 349.06 (Authority to adopt traffic regulations in strict conformity with state law)." Further sections to the law mandate UTC use for snowmobile and all-terrain-vehicle (ATV) violations related to

highway use (Chapter 350 and Chapter 23), and permit its use for violations of motor vehicle dealers and salvage vehicle dealers (Chapter 218).

The development and administration of the UTC is the responsibility of the Department of Transportation (DOT), Division of Motor Vehicles and the Council on Uniformity of Traffic Citations and Complaints. Besides identifying what information is to be included on the UTC, the statutes (Wis.Stat. (345.11(6)-(7)) also state that the DOT must print and provide distribution of the UTC's in a sequence of assigned numbers and that each law enforcement agency is responsible for the "disposition of all citations issued under its authority ... shall prepare and submit records and reports relating to the [UTC] in the manner and at the time described by [DOT]." Thus, though mandated for use by law enforcement, the burden of creating, printing, automating, and administering the UTC is born by the DOT.

Task Force Commentary on Administrative Impact of Statewide Notice

Any recommendation that a traffic warning / equipment repair notice be created for state-wide use, similar to the use of the UTC, must consider not only the merits of a standardized form, but also the tasks involved in the creation and administration of that form. The Department of Transportation has a vast employee base devoted to the administration of the UTC in terms of monitoring the form for corrections and updating, printing the form, distributing the form, recording the data on the form, and retaining the recorded documents. Elements of the recorded data from the UTC's currently provide information on driver violations, habits, and crashes, especially when compiled in combination with other reporting forms such as the Motor Vehicle Accident Report. All of these reports and studies require a substantial cost in terms of data entry functions, data retrieval, data analysis, computer programming, computer hardware, and personnel. Additionally, the DOT is currently studying the alternatives of putting the UTC in an electronic format for use by law enforcement mobile data computers and remote sites. All of these tasks involve a substantial amount of personnel, resources, funds, and time.

The creation of any additional form similar to the UTC would require an extensive study of the administrative impacts of the form on the DOT as well as the benefits anticipated to the law enforcement community. Thus, the Task Force

recommends that any consideration for the development of a traffic warning / equipment repair notice also consider the long-range administrative impacts of its implementation.

Task Force Commentary on Law Enforcement Advantages of Statewide Notice

As noted at the July 2000, Task Force meeting, law enforcement agencies in Wisconsin vary on their use of “warning notices”, or forms used to identify driver violations or behavior without the issuance of a citation. There is no standard form used by all agencies, but rather a variety of forms individually created to meet agency and jurisdictional needs, and not all agencies use a “warning notice”. The need to standardize a warning notice has been suggested by various law enforcement agencies, for a variety of reasons. In the context of this Task Force, however, the standardization will be considered as one tool for addressing in the issue of racial profiling during traffic stops. Thus, beyond a review of the administrative factors of creating a traffic warning / equipment repair notice, the law enforcement community has identified some of the advantages of such a form:

- A standardized form can provide a guideline for officers during a traffic stop that does not warrant a citation, but warrants some identification of a motorist problem. It can assist the officer in identifying the tasks of the stop that must be completed. Such a form even used without anything more can provide to the officer a procedure for talking to the motorist about his/her violation or driving. Used in conjunction with a standardized traffic stop protocol, it provides an additional tool to document that procedures followed during that stop.
- A standardized form provides the stopped motorist with a document to specifically indicate not only what his/her violation actually was, but also some documentation regarding the officer. It assists the motorist in identifying the officer for possible contact at a later date, either as part of a letter of compliment or a complaint procedure, and it provides the officer with a document for defense of possible allegations. A written “warning notice” can benefit both the motorist and the officer.
- A standardized form provides one more tool, used in conjunction with other tools, to assist in identifying the officer who is exemplary in his/her conduct or the officer who is not conducting traffic stops in compliance with agency policies and procedures. As with other tools available for supervisory use, review of the standardized form would be necessary only as instances warrant, or on a random basis in accordance with agency policy.

- Future use of a standardized form can assist in data collection on profiling issues. As a standard document, it would provide a possible database for the collection of standard information useful for study. However, as noted in the discussion above, any use of the standardized form must be studied in the entire realm of the fiscal and administrative impact on the department, office, or agency that is assigned the task of data collection.

FINDING: *Task Force members and the law enforcement community are interested in new initiatives but are not in favor of unfunded mandates.*

RECOMMENDATION: *Law enforcement should be encouraged to use in-car video cameras provided primarily through public funding alternatives.*

RECOMMENDATION: *Appropriate funding of initiatives should be sought from federal, state, and local government and private sources and provided to law enforcement to establish programs to address the perception and problem of racial profiling during traffic stops. These programs include, but are not limited to:*

- Traffic stop data collection and analysis;
- Community outreach by law enforcement;
- In-car video cameras;
- Outside resource collaboration for traffic stop data collection and analysis
- Computer technology.

Task Force Commentary on In-car Video Cameras

In-car video cameras are a more recent tool being implemented throughout the nation by all types of law enforcement agencies. The law enforcement community is increasingly employing this tool for officer and motorist safety. For supervisory purposes, the random review of in-car videotapes, as well as the review of tapes of challenged traffic stops, can be invaluable in reviewing officer performance. Initially hesitant of the use of the video cameras, field personnel now welcome the tool into their vehicles; the devices provide a record of officer performance, most positively, for supervisory review.

The use of in-car video cameras for law enforcement is a tool that is currently being widely discussed both nationwide and within Wisconsin. The Task Force heard numerous experts on racial profiling discuss the benefits of the use of video cameras and supporting audio equipment. As early as the March, 2000, meeting of the Task Force,

Mr. Stewart, Executive Director of the National Organization of Black Law Enforcement Executives (NOBLE) identified “video monitoring” as one of the first solutions to monitoring law enforcement activities. Mr. Stewart noted that “The vast majority of officers, deputies and troopers come to work every day to do a good job and just want to be told what it is that is expected of them... [and] There are a small number of police officers who are routinely rude, who need their behavior changed. But then there is a very, very, very small number of cops who really do profile.” He said that the video monitoring often shows the “high percentage of cases where the officer was right” and that “it has a deterrent effect.” At that same meeting, Mr. Amato, Chair of the Mayor’s Task Force on Race Relations for the City of Madison, noted that the report filed by the City contains a discussion of “video taping equipment and police vehicles.” He concurred with Professor Harris of the University of Toledo, that “there is data that shows that those police departments that have videos in their police cars, complaints go down and behaviors get better. And all of a sudden when people who want to file complaints go in the police department and realize that they’ve been video taped, a lot of times they withdraw their complaints. And officers now realize they better make sure that they follow practice and procedures.”

At the March 2000 Task Force meeting, Professor David Harris stated that in order to use video tapes to document long-term accountability, the video system must be properly set up to ensure it is not tampered with and to prevent the loss of the video evidence.

The cost factor of purchasing and installing video cameras can be a deterrent to their implementation. Wisconsin law enforcement reports that the average cost of a video camera is \$5000, and when multiplied by the number of vehicles in which the cameras must be placed, the cost could approach \$1,000,000. This is a large cost for any law enforcement agency, and one that must be weighed against the purchase of other equipment, the employment of additional officers, training, or the provision of support staff. In short, the benefits of the video cameras and their cost must be weighed against the entire budget and priorities of any agency. This does not diminish the value of the video cameras, but when viewed as part of a whole, they must receive the same scrutiny as any other budget item. Alternative funding, whether from Community Oriented

Policing (COPS) grants, state grants specific to law enforcement equipment, private grants, local and county budget line items, or other federal programs, must be researched and requested. Law enforcement agencies do not have funding available, within their own budgets, to provide for the entire cost of the video cameras. Funding can be provided over time, permitting purchase of video cameras in phases, with priority given to vehicles used in appropriate areas or with appropriate personnel.

Tapes from in-car video cameras are among the tools available for supervisory review, either on a random basis or in response to a specific complaint or litigation. Professor David Harris addressed the use of in-car video taping at the March 2000 Task Force meeting. He stated that though the video cameras are not a panacea, they are a “great idea” for various reasons: (1) “It’s obvious that it will give good information about what’s going on...but at the very least you can monitor the behavior that’s going on.” (2) “...We all know, I think that when we’re watched, we behave better.” and, (3) It’s great evidence in court; “...it can be good for prosecution, for law enforcement, for all kinds of reasons.”

Both the Wisconsin Chiefs of Police (WCPA) and the Wisconsin Law Enforcement Coalition (WLEC) recommend the use of video cameras, with public funding, in their resolutions on racial profiling. In their *Resolution No. 2000-03* (attached in Appendix 6), the WCPA states that “Further, the Wisconsin Chiefs of Police Association encourages public funding of in-car video cameras for all Wisconsin Law Enforcement Agencies”, while the WLEC offers the same recommendation in its August, 2000, *Position Statement on Race-Based Enforcement* (attached in Appendix 6). No one tool, or technique, or policy, will be able to combat racial profiling by itself. It takes an entire program, using all available tools and resources, to change habits, create new habits, restore trust, and improve policing.

FINDING: The law enforcement community in Wisconsin, the judicial system in Wisconsin, and the citizens of Wisconsin are all vital components in addressing the issue of racial profiling during traffic stops. It is important that each person in Wisconsin be made aware of what the task force has learned about racial profiling including its characteristics, its effects, and its solutions.

RECOMMENDATION: *The Task Force recommends that copies of this report be widely distributed, including but not limited to:*

- The appropriate Senate and Assembly Committees of the Wisconsin Legislature;
- The Wisconsin Attorney General;
- The Secretary of the Wisconsin Department of Transportation;
- The Secretary of the Wisconsin Department of Administration;
- Wisconsin law enforcement executives, Sheriffs, Chiefs of Police, and the Superintendent of the Wisconsin State Patrol;
- Wisconsin law enforcement unions and associations;
- Community based organizations with an interest in this issue.

RECOMMENDATION: *The executive summary to this report should be available on the Internet for public review.*